

# Public Comment FW: City Council Meeting, 1/10/2023, Item 3

Weston Montgomery

Mon 1/9/2023 8:17 AM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

1 attachments (14 KB)

Ojai historic overlay letter.docx;

-----Original Message-----

From: Tony Thacher <[REDACTED]>  
Sent: Friday, January 6, 2023 4:59 PM  
To: Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
Subject: City Council Meeting, 1/10/2023, Item 3

Mr. Montgomery:

At the behest of Brian Aikens, I am resubmitting my comments about the proposed Local Downtown Historic District, Item 3 of the City Council's agenda for 1/10/2023.

Thank you.

Tony Thacher  
[REDACTED]

Re: Ojai City Council regular meeting,  
Thursday, October 25, 2022  
Item Number: 5

My name is Anson B. (Tony) Thacher and I live outside the city boundaries at [REDACTED]  
[REDACTED], Ojai, CA 93023.

Anne and I own the easternmost proposed 'contributing' property on the Downtown Historic District map issued by the Historic Preservation Commission, labeled B39. It's situated on the corner of Ojai Avenue and Fox Street and is currently occupied by Ojai Roti. My father-in-law built the structures there as a gas station in the '30's; and after considerable underground remediation work, it was remodeled and repurposed in the late '80's with guidance from renown Ojai architect Zelma Wilson. Anne spent the first 12 years of her life in the small house at the back of the property.

We have voted 'YES,' in favor of the proposed district.

When, more than 110 years ago, Edward Drummond Libbey promulgated and succeeded in convincing the citizens of the Ojai Valley that their somewhat ramshackle downtown area could be made over into an architecturally and artful city beautiful project he did a great service to those of us who followed and are fortunate to live and enjoy our iconic city center. Five years ago, in April, 2017, the Ojai Valley Museum along with the help of the City, the Ojai Civic Association and the citizenry of the valley enacted an event from 100 years earlier: the symbolic act of Mr. Libbey handing over the deed to the post office and what we now call Libbey Park, to my grandfather, Sherman Thacher, and to the newly formed Ojai Civic Association. As you know there was no city at that juncture since we just celebrated that 100<sup>th</sup> anniversary last June. But may I remind you of your ownership of the Ojai Valley Museum that it was also largely built and financed by Mr. Libbey and the townspeople to replace the previous Catholic chapel which had burned in the devastating fire in the fall of that same year, 1917. This nationally registered historic building, built in the same Spanish revival architectural style anchors the proposed district on the west. I could go on about folks such as architect Rodney Walker's and local builder, Jerry Peterson's '80's remodel of the El Roblar Hotel in keeping with the downtown image as we would expect, in spite of Walker's preeminence as a glass and open space modernist.

There seems to be quite a bit of deliberate misinformation being spread around about the proposed Downtown Historic District. My understanding is that it protects what the external visible portions of the downtown buildings will look like and also provides access to state funds for remodeling on a competitive basis. Yes, there are many details to any conceptual building permitting in the city, but this proposal simply makes the process more transparent while protecting our precious architecturally iconic downtown area.

I will not be around to envision what the southwest corner of Ojai Avenue and Fox Street will look like in 50 years, but I feel hopeful that it will still be in keeping with our forefather vision of what a city beautiful should be. Thus, my vote of 'yes' on this proposal.

# Public Comment FW: Please Distribute to Council on Monday morning

Weston Montgomery

Mon 1/9/2023 10:36 AM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

1 attachments (19 KB)

Letter to Council Historic District 1.10.23.docx;

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**From:** Robin Godfrey <Robin.Godfrey@ojai.ca.gov>  
**Sent:** Monday, January 9, 2023 10:25 AM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** FW: Please Distribute to Council on Monday morning

Please include in public comments (see below). If this is not you, please let me know.

Thanks!

Robin

**From:** Craig Walker <[REDACTED]>  
**Sent:** Saturday, January 7, 2023 3:20 PM  
**To:** Robin Godfrey <[Robin.Godfrey@ojai.ca.gov](mailto:Robin.Godfrey@ojai.ca.gov)>  
**Subject:** Please Distribute to Council on Monday morning

Hi, Robin,

Please forward my attached letter to all City Council members on Monday so they will have time to read it before their meeting on Tuesday, January 10th. Please include in public comments for this agenda item as well (Item 2, Nomination Votes for proposed Ojai Historic District).

Thank you,

Craig Walker

TO: The Ojai City Council  
FROM: Craig Walker  
RE: Continuation of the Downtown Historic District Nomination Process  
Agenda Item #2: January 10<sup>th</sup>, 2023.

The Municipal Code says:

**“4-8.05: The functions and powers of the Historic Preservation Commission shall be:**  
a. *Evaluation.* The Historic Preservation Commission or Community Development Director may investigate any structure in the City which the Council or Planning Commission or Historic Preservation Commission has reason to believe should be declared an historical landmark, historic district, structure of merit, or point of historical interest;”

The Historic Preservation Commission (HPC) is simply doing its job: investigating Ojai's downtown buildings, gathering input from the public and property owners, identifying possible boundaries and parameters, and preparing a formal nomination. There is no timeline for this function in the city ordinance...it takes a while, and there is a lot to do. **Only after a formal nomination is prepared and submitted does a timeline start**--the HPC then has 90 days to write a report, take a vote of the property owners, and submit the nomination with a recommendation to the council.

There is ample reason for the HPC to believe downtown Ojai should be nominated a City of Ojai historic district. Several downtown buildings are already City landmarks. The State Office of Historic Preservation, all on its own, listed downtown Ojai on the California Register of Historic Places. A historic district designation will promote the history of the area, protect it with a historic zoning overlay, and establish eligibility for tax and other benefits to help maintain the area as historic.

At this time, there has not even been a nomination—the final boundaries and parameters of the district are still being determined. The property owners who voted didn't really have anything concrete to vote on. Some of the property owners who voted might not even get an official vote if the formal nomination excludes them from the district. Without defined parameters, the votes before you were only based on conjecture and hearsay.

To give the HPC only a few months to do its investigation--without city funds and during a pandemic—is unfair and unprecedented. No previous preliminary study of a potential historic resource has been short-circuited in this way.

I would ask the council to follow the process outlined in the municipal code--let the HPC do its preliminary study (with more support from the city, if possible). If a formal nomination results (laying out final boundaries and parameters), then do the survey of property owners to determine support. This is what the ordinance calls for. The HPC will then either recommend or not the historic district to the council. Once the HPC recommendation comes before the Council, the property owners will have another opportunity to object.

To block the HPC from even preparing a nomination, and asking the property owners to vote on the basis of incomplete information, is wrong and poor government. Downtown Historic Districts have benefitted cities all over America. Ventura, Oxnard, Santa Barbara, San Luis Obispo, all have them and they have allowed these cities to recognize and support their historic legacy. The State of California recognizes and values the historic importance of downtown Ojai. We should, too.

FW: Public Comment - Ojai City Council Meeting - January 10, 2023 - Agenda Item 3

[Weston Montgomery](#)

Mon 1/9/2023 5:17 PM

To: Brian Popovich <Brian.Popovich@ojai.ca.gov>;

0 1 attachments (2 MB)

2023.01.09 Ojai Letter.pdf;

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**From:** Carlson, Mack <[REDACTED]>

**Sent:** Monday, January 9, 2023 4:47 PM

**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>

**Cc:** [REDACTED]

**Subject:** Public Comment - Ojai City Council Meeting - January 10, 2023 - Agenda Item 3

Hello:

Please find attached a public comment letter submitted on behalf of Ojai Bungalows for City Council Agenda Item No. 3 on the January 10, 2023 agenda.

Thank you,

**Mack Carlson**

**Brownstein Hyatt Farber Schreck, LLP**

Santa Barbara, CA 93101

**Brownstein - we're all in.**

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January 9, 2023

Beth A. Collins  
Attorney at Law

**VIA EMAIL**

[CITYCLERK@OJAICITY.ORG](mailto:CITYCLERK@OJAICITY.ORG)

Mayor Stix and Councilmembers  
Ojai City Hall  
401 S. Ventura Street  
Ojai, CA 93023

**RE: “Referendum against an Ordinance Passed by the City Council; Ordinance No. 934”  
Approving a Development Agreement for Ojai Bungalows, LP and Greenhawk, LLC c/o The Becker Group, January 10, 2023 City Council Hearing**

Dear Mayor Stix and Councilmembers:

We welcome the new Councilmembers Lang, Rule, and Whitman to the Ojai City Council (“Council”). We know you all have been tracking the Development Agreement carefully, through your attendance and public comment at previous Council meetings where the Development Agreement was extensively deliberated, and ultimately approved at two consecutive meetings, by a 4-1 vote of the prior Council.

As you know, we represent Ojai Bungalows, LP and Greenhawk LLC (collectively, “Ojai Bungalows”), the owners of the properties at 312 W. Aliso Street (“Cottages Project”), 304 S. Montgomery (“Montgomery Project”), 412 Mallory Way (“Mallory Project”), and 107 N. Ventura Street (“World University Project”) in the Development Agreement and Ordinance (“Development Agreement” or “Project”) at which the Referendum is aimed.

We take this opportunity to again provide you with our key letters on the matter, attached hereto, in which we raise a number of points about: (1) the Development Agreement’s benefits to the City and the residents of the Cottages, Mallory, and the greater community, (2) the Development Agreement’s compliance with the California Environmental Quality Act (“CEQA”), and (3) the Ojai Bungalow’s legal rights to develop its properties.

In addition to reminding the Council of those points, we would like to share with the Council: (1) the steps we have taken since October, and (2) the contemplated or planned future steps toward the goal of providing affordable housing opportunities in the City of Ojai (“City”).

We urge the Council to consider these points and submit Ordinance No. 934 to the voters. We believe the voters will support the Development Agreement—which will create much needed privately-funded, 55-year deed-restricted affordable housing in Ojai for the first time since the 1970s in addition to providing unprecedented protections for existing tenants.

## **I. OUR CLIENTS CONTINUE TO PURSUE THESE MUCH-NEEDED HOUSING PROJECTS**

As you have by now been briefed by the City's Attorney, Simply Ojai filed a lawsuit against the City challenging the City's approval of the Development Agreement, asserting various claims for violations of state law, local ordinances, and the CEQA. The proponents of the Referendum are closely affiliated with Simply Ojai and seek to leverage approximately 10 percent of the City's voters to maintain the status quo. The Referendum, like the Simply Ojai's lawsuit, is a vocal minority group's attempt to usurp the prior Council's decision.

These actions, under the guise of protecting the City's existing affordable housing, will instead intensify the problem by blocking the solution—providing more affordable housing units. Despite this opposition from a select few, Ojai Bungalows remains committed to providing new, affordable housing units within the City. Ojai Bungalows had hoped to move forward by collaborating with the City through the Development Agreement and continues to hope that the voters will agree that the Project is good for Ojai. In light of this recent opposition, however, Ojai Bungalows feels obligated to remind the Council and public of its legal rights.

### **A. Time Extensions Applications for Cottages and Mallory are Still Pending**

While the City approved the Development Agreement which combined the four projects above, both the Cottages and Mallory Projects, individually were previously approved by the City on November 27, 2007 and June 26, 2012, respectively. Currently, Ojai Bungalows only has pending time extension applications, which are necessary to obtain final building permits, related to these previously approved projects.

The Cottages and Mallory Projects were originally approved before the City adopted Replacement Housing General Plan Policy and Replacement Housing Ordinance in 2013. As discussed in the letters, Ojai Bungalows previously received multiple extensions to those applications without any notice that the City planned to apply the City's 2013 Replacement Housing provisions to the extensions because those provisions were clearly enacted after the Cottages and Mallory Projects were approved. When the City abruptly changed its position, Ojai Bungalows sought to find common ground rather than push back against the City and voluntarily agreed to have the Council pause processing those extensions to negotiate in good faith a mutually beneficial Development Agreement.

If the Development Agreement is rescinded, Ojai Bungalows will revive those extension applications. Under the Housing Accountability Act ("HAA"), the Council must approve those extensions as

explained in the attached letters because the Cottages and Mallory Projects were consistent with the City's General Plan and Zoning when they were deemed complete and originally approved. (Gov. Code, § 65589.5(j).)

Notably, *Save Lafayette v. City of Lafayette*, a recent appellate court decision, further confirms that the City cannot apply later enacted standards to a project.<sup>1</sup> In *Save Lafayette*, the developer submitted an application for an apartment project in 2011 that was deemed consistent with the city's general plan and zoning at the time. The developer and city, however, later agreed to pause the apartment project and move forward with a lower density alternative. After many years, a legal challenge and a referendum, the city amended its general plan and zoning ordinance in 2018 to prevent the developer's lower density project. In response, the developer revived his 2011 apartment project, which the city ultimately approved. Opponents challenged the 2011 apartment project as non-compliant with the later-enacted 2018 general plan and zoning ordinance. The *Save Lafayette* court rejected opponents' argument affirming that the HAA required the city to process the developer's 2011 apartment application based on the 2011 general plan and zoning standards, not using the later-enacted 2018 standards.

Ojai Bungalows followed a similar arduous path to the developer in *Save Lafayette*, except all while the City had already approved the Cottages and Mallory Projects. The HAA clearly states that housing projects must be judged based on the standards in effect at the date the application was "deemed complete," which here occurred long before the City ultimately approved the Cottages and Mallory Projects.

This Council should not be persuaded by Project opponents to reject the Development Agreement that provides meaningful tenant protections, additional deed restricted units and extended rental requirements. Otherwise, Ojai Bungalows will be forced to move forward with the Cottages and Mallory Projects under the HAA and without benefits included in the Development Agreement.

**B. Ojai Bungalows Submitted SB 330 Preliminary Applications to Preserve Its Right to Move Forward with the Montgomery and World University Projects**

On December 13, 2022, Ojai Bungalows submitted SB 330 Preliminary Applications on the Montgomery and World University Projects as a first step in pursuing both of those projects individually, outside of the negotiated Development Agreement. Ojai Bungalows found this necessary in light of the open hostility that a vocal minority has toward new, affordable housing development in Ojai.

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<sup>1</sup> *Save Lafayette v. City of Lafayette*, No. A164394 (Nov. 30, 2022), <https://www.courts.ca.gov/opinions/documents/A164394.PDF> ("Save Lafayette")

A SB 330 Preliminary Application freezes the City's development standards in effect at the time the application was submitted. (Gov. Code, §§ 65589.5(h)(5) & (o), 65941.1.) At the time these SB 330 Preliminary Applications were submitted, the City did not—and still does not—have a compliant Housing Element.<sup>2</sup> As such, Ojai Bungalow's SB 330 Preliminary Applications for the Montgomery and World University Project freeze the City's development standards as of December 13, 2022, including the fact that the City has a noncompliant Housing Element.

The SB 330 Preliminary Applications propose projects that are similar to those in the Development Agreement and qualify under the HAA as "housing for very low, low-, or moderate-income households." (Gov. Code, § 65589.5(h)(3).) These qualifying projects receive additional protections under the HAA. (Gov. Code, § 65589.5(d).) Most notably, the HAA provides that the City cannot deny the Montgomery and World University Projects—even if the projects are inconsistent with the City's zoning and general plan land use designations—because the City did not have a compliant Housing Element when Ojai Bungalows submitted its application. (Gov. Code, § 65589.5(d)(5).) This approval pathway has commonly been referred to as the "Builder's Remedy" and is designed to support the Legislature's intent "to afford the fullest possible weight to the interest of, and approval and provision of, housing." (Gov. Code, § 65589.5(a)(2)(L).)

Ojai Bungalows thus has the right under these SB 330 Preliminary Applications and the Builder's Remedy to move forward with Montgomery and World University Projects absent the Development Agreement. This approach would severely limit the City's discretion to deny or condition these projects, avoid rezone requirements and other approvals, and ultimately the individual projects would result in fewer total affordable units for the City.

Further, if forced to pursue any of these projects individually, under the HAA the City would face significant financial risks should it seek to deny the project under the HAA. Specifically, the Legislature holds cities accountable by allowing project applicants, any person eligible for residency in a housing project, and housing organizations to sue to enforce the HAA and obtain attorneys' fees for doing so. (Gov. Code, § 65589.5(k).)

By submitting these applications, Ojai Bungalows expresses their continued interest in provided housing within the City regardless of the opposition by a vocal minority threatening CEQA litigation or a Referendum to stop new, affordable housing development that help the City address its housing crisis. Ojai Bungalows continues to hope that it can proceed with the City under the mutually beneficial Development Agreement that offers significant benefits for existing residential tenants and expands affordable housing options in the City.

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<sup>2</sup> See California Department of Housing and Community Development, Housing Element Review and Compliance Report <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-review-and-compliance-report> (accessed on Jan. 6, 2023) (stating Ojai's compliance status as "OUT"). The Housing Element is a required element of the Ojai General Plan that requires the City to plan for the development of new housing within the City to accommodate all economic segments of the community.

However, Ojai Bungalows is no longer naïve in thinking that all Ojai residents share its vision for affordable housing in the City for teachers, service industry employees and other essential workers. Should the Ordinance approving the Development Agreement be overturned by this Council, through the Referendum or through CEQA litigation, Ojai Bungalows remains committed to moving forward with the Montgomery and World University—as well as the Cottages and Mallory Project—without the added benefits that the Development Agreement provides the City and its residents.

## **II. APPROVING THE DEVELOPMENT AGREEMENT IS RIGHT FOR OJAI**

The Development Agreement presents an unprecedented opportunity for Ojai following long, public, good faith negotiations between Ojai Bungalows and the Council. The resulting Development Agreement will provide deed-restricted affordable units for 55 years, phasing that will ensure the construction of all the affordable units before the remainder of the market units, and novel tenant protections for the City.

Without the Development Agreement, Ojai Bungalows can pursue all four projects in a manner described above, leaving the City with little to no discretion. Without the Development Agreement, the City also will lose the tenant protections that go above and beyond what is required by state law. Without the Development Agreement, the City will end up with fewer deed restricted units.

The City Council must not be swayed by NIMBYs threatening you with CEQA litigation or the Referendum. This is not a question of maintaining the status quo versus the new development. These attacks on the approval do not protect any current or future renters in the City or the environment, rather they only delay the development of much needed affordable housing within the City. Changes at these four properties will occur; the Development Agreement simply allows the City to dictate the process.

We respectfully request that this Council make the right decision for the City of Ojai and its residents and let the voters decide whether to repeal the Development Agreement.

Sincerely,



Beth A. Collins

Cc: Matthew Summers, City Attorney

October 25, 2022

Beth A. Collins  
Attorney at Law

**VIA EMAIL**

**CITYCLERK@OJAICITY.ORG**

Mayor Stix and Councilmembers  
Ojai City Hall  
401 S. Ventura Street  
Ojai, CA 93023

**RE: Affordable Housing Development Agreement, October 25, 2022 Council Hearing**

Dear Mayor Stix and Councilmembers,

As you know, we represent Ojai Bungalows LP and Greenhawk LLC (collectively, “Ojai Bungalows”), the owners of the properties at 312 W. Aliso Street (“Cottages Project”), 304 S. Montgomery (“Montgomery Project”), 412 Mallory Way (“Mallory Project”), and 107 N. Ventura Street (“World University Project”) in the Development Agreement being considered on October 18, 2022 (“Development Agreement” or “Project”).

We would like to thank this Council for your vote last week in support of the Ojai Bungalows Project and ask for your vote again this week at the second reading. Why? In short, the Development Agreement is the right thing for the City of Ojai (“Ojai” or “City”). It is right for the existing tenants at Cottages and Mallory, it is right for all tenants and residents of Ojai, and it is even right for the planet.

**I. Redevelopment of Housing Provides Critical Environmental and Safety Benefits to the Residents and the Community**

It may seem counterintuitive, but redevelopment of the City’s antiquated housing stock is the best way for the City to meet its climate goals. Infill redevelopment on unused and underutilized land within existing areas is critical to accommodate growth and to redesign cities to be more sustainable.<sup>1</sup> Plus, it will help ensure Ojai provides sufficient humane, affordable housing for its residents. That is because the City’s old housing stock was constructed under old building codes, but the proposed new and refurbished units must comply with updated building codes. This will result in enormous water

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<sup>1</sup> California Governor’s Office of Planning and Research, Infill Development <https://opr.ca.gov/planning/land-use/infill-development/> (accessed on Oct. 24, 2022);

savings per unit and increased energy efficiency for every unit, and it will significantly decrease fire, flood, and earthquake risk for the residents. This has been analyzed by numerous experts, such as:

- Sierra Club, Guidance For Smart Growth And the Urban Infill Policy (Aug. 2021) available at <https://drive.google.com/file/d/11R80kTpPMYZ9XWbQrGdh4KuhNORKf8LG/view> [“If we begin to rebuild our existing neighborhoods and regional infrastructure around properly tailored Smart Growth design, instead of continuing to build new sprawling development, we can save vast amounts of land. We can also dramatically cut our climate emissions while creating more convenient and equitable neighborhoods and regions. In addition to better environmental and social outcomes this strategy can also better serve the economic needs of our society.”]
- Terner Center for Housing Innovation, University of California, Berkeley, Right Type, Right Place: Assessing the Environmental and Economic Impacts of Residential Development Through 2030 (Apr. 10, 2017) available at <https://ternercenter.berkeley.edu/research-and-policy/right-type-right-place/> [“Residents in the largest coastal cities in California encounter some of the most unaffordable homes in the nation, caused in large part by a thriving economy and a multi-decade-long undersupply of housing relative to population and job growth. In addition to the income squeeze of unaffordable homes and long commutes, the housing shortage creates environmental challenges. Most prominently, building more auto-dependent housing far from job centers generates more traffic and air pollution while destroying open space and agricultural lands. . . . Of the three housing production scenarios analyzed, the Centers found that the *infill-focused housing growth scenario provides the best outcomes for meeting the state’s climate goals while also producing economic benefits. This scenario could help avert at least 1.79 million metric tons of greenhouse gases annually compared to the business-as-usual scenario, based on reduced driving miles and household energy usage alone.*”(Emphasis added).]
- Smith Group, DC, Low-Impact Infill Housing, Combat the Climate Challenge, the Housing Crisis & Disrupt Development (Sept. 2021) available at <https://www.smithgroup.com/sites/default/files/2021-09/2021%20LIIH%20DIY%20Guide%20%281%29.pdf> [“Cool Climate Network found that urban infill held the greatest opportunity to reduce GHG (greenhouse gases), making low-impact, infill housing the lowest hanging fruit with the highest return that is accessible to a wide range of stakeholders.”]
- Tyler Adams, Encourage Infill Development, Sustainable Development Code, available at <https://sustainablecitycode.org/brief/encourage-infill-development-5/> [“[I]nfill development helps combat sprawl, which is often comprised of low density development and the separation of uses, thus increasing a community’s reliance on automobiles. ” (Citations omitted).] (accessed on Oct. 24, 2022).

- State of California, Urban Strategy For California (April 18, 1979) available at [https://opr.ca.gov/docs/20190325-urban\\_strategy-ocr.pdf](https://opr.ca.gov/docs/20190325-urban_strategy-ocr.pdf) [The report establishes a goal to “improve existing housing and encourage new urban development” and acknowledges that to accomplish the states goal of a society in harmony with the land “California must commit itself to more compact urban areas, to the revitalization of its existing cities and suburbs, to the continued protection of its best agricultural lands.” ]

Thus, this Project will result in a safer, more resilient, and climate friendly Ojai.

## II. California Housing Crisis and State Housing Laws

California faces an acute housing crisis making any new units critical to ensure residents retain the fundamental right to access shelter. Estimates indicate that **California had an unmet housing need of approximately 2.3 million units as of 2017.**<sup>2</sup> To address the crisis, state officials estimate that about 310,000 new housing units must be built over the next eight years, more than 2.5 times the number normally built in the state.<sup>3</sup> Given this unmet demand, even the construction of market-rate units “reduces housing costs for low-income households and, consequently, helps to mitigate displacement in many cases.”<sup>4</sup>

The California Legislature also has responded to the crisis by enacting significant new housing legislation each year that restrict local regulations that create barriers for new housing development. In 2022, the Legislature passed and the Governor signed 41 new housing bills to streamline housing development so families can live and work throughout the state.<sup>5</sup>

The Development Agreement allows the City to partner with a developer to help address the California Housing Crisis while dictating the terms of development on four properties. By improving and constructing 67 residential units in the City, the Development Agreement would meet over half of

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<sup>2</sup> PPIC, California’s Future – Housing, p. 2 (January 2020) available at <https://www.ppic.org/wp-content/uploads/californias-future-housing-january-2020.pdf>

<sup>3</sup> See, e.g., KSBY, California Governor Signs Laws to Boost Housing Production (Sept. 28, 2022)

<https://www.ksby.com/news/california-news/california-governor-signs-laws-to-boost-housing-production>

<sup>4</sup> California Legislative Analyst’s Office, Perspectives on Helping Low-Income Californians Afford Housing (Feb. 9, 2016) available at <https://lao.ca.gov/Reports/2016/3345/Low-income-Housing-020816.pdf>; see also California Legislative Analyst’s Office, California’s High Housing Costs – Causes and Consequences, p. 10 (Mar. 17, 2005) available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>; Vicki Been, Ingrid Gould Ellen and Katherine O’Reagan, NYU Furman Center, Supply Skepticism: Housing Supply and Affordability, p 4, 7. (Aug. 20, 2018) available at [https://furmancenter.org/files/Supply\\_Skepticism - Final.pdf](https://furmancenter.org/files/Supply_Skepticism - Final.pdf) [“New construction is crucial for keeping housing affordable, even in markets where much of the new construction is itself high-end housing that most people can’t afford. A lack of supply to meet demand at the high end affects prices across submarkets and makes housing less affordable to residents in lower-cost submarkets.”].

<sup>5</sup> Office of Governor Gavin Newsom, California to Build More Housing, Faster (Sept. 28, 2022) <https://www.gov.ca.gov/2022/09/28/california-to-build-more-housing-faster/>

the City's unit obligations in its 2021-2029 Housing Element and providing much needed housing for Ojai residents.

Although commenters have raised that the City can meet its Housing Element obligations through the construction of Accessory Dwelling Units (ADUs), this strategy fails to acknowledge the need for the City to address a wide variety of housing needs that cannot be satisfied by ADUs alone. The City Council acknowledged its need for a mix of housing units when it adopted its Housing Element stating “[t]he City plans to fulfill its share of regional housing needs *using a combination of vacant residential sites, underutilized residentially zoned and mixed-use zoned sites*, and accessory dwelling units.”<sup>6</sup> This is consistent with recent state guidance to the City of Santa Monica that its proposal to meet its regional housing needs through ADUs was insufficient “to overcome patterns of segregation and foster inclusive communities” and thus failed to affirmatively further fair housing.<sup>7</sup> The Development Agreement critically supports the City achieving its Housing Element objective by revitalizing its aging housing stock and creating new housing in underutilized residential and mixed-use zones. Relying on ADUs alone to supply housing is inconsistent with the Housing Element and fails to acknowledge the diverse mix of residential unit types needed in the community to affirmatively further fair housing.

Importantly, the Development Agreement also locks in the development at these four sites for the next 10 years. As the Legislature continues to wrest control from cities over housing projects — by requiring cities to increase density, limiting local design review standards, and streamlining permitting — the City has increased certainty that these four sites will be developed consistent with the Development Agreement. Without the Development Agreement, these sites could be developed under future state housing laws that are likely to further restrict the City's ability to control the size, bulk and scale of the development. The Development Agreement includes the added benefit of providing increased local control regarding the development of these sites.

### **III. The 27 New 55-year Deed-Restricted Residential Units Plus the Phasing Plan and Tenant Protections Provide Additional, Unprecedented Benefits to Ojai.**

As mention by numerous commenters, **Ojai has not constructed any affordable housing since the 1970s. Ojai also has zero deed-restricted units** that are owned and/or operated by a private developer.<sup>8</sup> The Development Agreement thus provides the first opportunity for the City to demonstrate it can work with private developers to construct deed-restricted affordable units.

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<sup>6</sup> Ojai City Council, Resolution 21-48, Sec. 1.d.

<sup>7</sup> See Department of Housing and Community Development, City of Santa Monica's 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element (Feb. 8, 2022) available at <https://drive.google.com/file/d/1P5C5dCa0NY7lxKD9MMssnAQwrUzhxqaZ/view>.

<sup>8</sup> See Housing Trust Fund, Affordable Housing by City in Ventura County, (Apr. 6, 2020) available at <https://www.housingtrustfundvc.org/uploads/1/2/9/0/129057661/affordablehousing-resourcelist.pdf>; City of Ojai, 2021-2019 Housing Element, p. 29 (Oct. 2021) available at <https://www.hcd.ca.gov/housing-elements/docs/ojai-6th-adopted101321.pdf>.

Although the Cottages and Mallory Projects currently host 31 units with tenants, as the City's staff and attorney have repeatedly confirmed, the units themselves have no deed-restricted protections. The rent could be raised (following existing law), or the units at the Cottages Project could be sold separately, at any time, and the units could become market units – forever. The families that own the Cottages and Mallory Projects do not want that to happen. That is why they have worked for years with the City toward an alternate solution, and the result is this groundbreaking Development Agreement.

This Development Agreement will deliver **27 affordable units** that are **deed-restricted for 55-years**. Plus, the **phasing plan** will require the construction of **all the affordable units in the project before any existing tenants will need to relocate from the Cottages Project or the Mallory Project**. Furthermore, this Project offers generous additional tenant relocation benefits.

The City needs new deed-restricted affordable housing. The City's Housing Element details various factors that demonstrate Ojai's housing crisis: Ojai has many rent burdened residents (those spending more than 30% of their income toward rent), Ojai has a high percentage of substandard rental units that lack adequate kitchen and/or bathroom facilities, and Ojai has various other contributors to dislocation of current tenants, including lack of new units and serious upward pressure on rental rates. The County's Housing Authority (AHACV) manages all but two of the City's deed-restricted affordable housing developments.<sup>9</sup> Per their publications, the developments are failing to meet the current need "vacancies in our public housing facilities are infrequent. We are currently able to serve between 35-40 new applicants each year, while the waiting list continues to grow. The ESTIMATED waiting time ranges from 2 to 5 years.<sup>10</sup>" In sum, Ojai has a housing crisis, and this Project is a critical step forward for the community which will help start ameliorating the crisis.

#### **IV. The Development Agreement Protects Current Tenants Well Beyond the City's General Plan and Zoning Code Replacement Housing Requirements**

As explained in our prior letters, the City's 2013 Replacement Housing Policy and Replacement Housing Ordinance—adopted after the Cottages and Mallory Projects were approved by the City on November 27, 2007 and June 26, 2012, respectively—do not apply to these Projects. As such, the Development Agreement offers additional protections for the current tenants that cannot be legally applied. Public commenters, however, have raised that the City should apply these 2013 Replacement Housing Policies and Ordinances to these Projects based on the fact that these units are rented at affordable rates and may be currently rented to qualifying persons or households. Not so. The

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<sup>9</sup> The two non-AHACV managed developments are managed by the Cabrillo Economic Development Corporation (CEDC).

<sup>10</sup> AHACV: Public Housing Waiting List available as of 10/25/2022 at <https://www.ahacv.org/housing-programs/public-housing/waiting-list/>

Replacement Housing Ordinance does not require the current tenants to receive new affordable units in the Projects, nor are the facts relevant to the Projects.

Ojai Municipal Code section 10-2.904 states “the conversion or demolition of existing residential dwelling units inhabited by persons and families of very low, lower or moderate income shall not be authorized unless provisions have been made for the replacement of those dwelling units with affordable units...” (Emphasis added.) For the purposes of the Ordinance, “inhabited” means “[a] dwelling unit that serves as a place of permanent or customary and usual abode of a person or household who, at the time application is filed with the City for a land use permit subject to the provisions of this article, lawfully occupied the premises.”<sup>11</sup>

The language in this section – which limits application of the Ordinance to tenants at the time the application was filed – further supports the interpretation that the 2013 Replacement Housing Ordinance was only intended to be applied prospectively to new housing development applications, not extension such as Cottage and Mallory. Under the Ordinance’s language, the Replacement Housing Ordinance would only apply to units on the Cottages and Mallory Way sites that were occupied by qualifying tenants as of the date of the applications in 2007 and 2012, respectively, under then-current income thresholds.

Even if one was to accept the City’s position that the 2013 Replacement Housing Ordinance may apply to Ojai Bungalow’s extension applications, Ojai Bungalows filed the time extension application for the Cottages Project on March 15, 2019 and the time extension application for the Mallory Way Project on May 15, 2017. Accordingly, even if the City is correct, the Replacement Housing Ordinance would only require the replacement of qualifying affordable units under then-applicable income thresholds. Therefore, the purported data provided by public commenters about the present gross incomes of current tenants is irrelevant to the potential application of the City’s Replacement Housing Ordinance to these Projects.

Furthermore, even if the City’s 2013 Replacement Housing Ordinance applies, it does not provide relocation assistance or offer rights of first refusal to qualified existing tenants (as the Development Agreement does). A developer can simply offer to replace the units through on-site construction, pay and in-lieu fee or take “equivalent action subject” to City Council approval.<sup>12</sup> Thus, the Development Agreement offers stronger protections for current tenants at the Cottages and Mallory Way Projects than those available under the City’s Municipal Code.

Numerous public commenters have raise thoughtful ideas about the City amending its General Plan and Zoning Code to provide better tenant protections. Ojai Bungalows does not oppose these efforts. The City Council may amend the General Plan and Zoning Code to provide tenants with the protections Ojai Bungalows offers in the Development Agreement and/or consistent with public

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<sup>11</sup> Ojai Municipal Code, Sec. 10-2.902.

<sup>12</sup> Ojai Municipal Code, Sec. 10-2.904(a)

comments. These amendments would provide certainty to tenants and developers about their rights and obligations at the outset of the permit application process and avoid the risks that City Council arbitrarily applies affordable housing requirements to controversial projects, but not others. Ojai Bungalows hopes that the Development Agreement will further a dialogue about how the City can amend its General Plan and Zoning Ordinance to better protect tenants and continue the development of much needed affordable infill housing.

#### **V. Many Current Residents of Cottages and Mallory Moved In After The Appeal Was Filed**

Additionally, it is notable that many of the 31 current tenants at Cottages and Mallory moved in knowing that the Project was proposed and that redevelopment of the sites was in process. Tenants knew that was one of the reasons that the owners of Cottages and Mallory maintained the rent at lower levels, not raising it significantly since they purchased the property around 2016, and maintaining that stance, especially during the pandemic.

In fact, 17 of the residents at Cottages (4) and Mallory (13) have provisions in their leases making clear that the property is being refurbished and that they will be displaced from their unit at the time that it will be refurbished. The language reads as follows:

*The property and premises will be remodeled in 2021-2023<sup>13</sup>. The Lessee(s) acknowledge that they have been advised of the work, possible noise and miscellaneous disturbances. Lessee will be provided a minimum 60 day termination notice, if/when their unit is being remodeled.<sup>14</sup>*

Further, we note that 13 of the tenants (8 at Mallory and 4 at Cottages) moved in after the Council filed their appeal in Spring 2019, and all tenants are on a month to month lease.

Therefore, the tenants at Cottages and Mallory have been benefiting from depressed rents at these properties for many years, and more than half of the tenants moved into their units knowing that they would be displaced when the site was ultimately developed. The Development Agreement being considered by this Council provides significant additional benefits – phasing and tenant relocation protections – that go far above and beyond the existing lease agreements or other protections that these tenants enjoy from the Tenant Protection Act or the City Code.

#### **VI. The City Has Fully Complied with California Environmental Quality Act**

This letter further explains why the City has fully complied with the California Environmental Quality Act (“CEQA”) on this Project. The City correctly concluded that various CEQA exemptions apply to the Project. Additionally, the City has correctly concluded that there are no new significant impacts and no changes in circumstance that trigger the need for a subsequent or supplemental EIR for the

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<sup>13</sup> There are multiple versions of the Addendum and timing varies e.g. some state 2020-2022, some state 2021-2023

<sup>14</sup> Alternate version says Lessee will be provided a minimum 60 day termination notice prior to their unit being remodeled.

Cottages or Mallory Projects. The City's CEQA analysis and application is appropriate for all sites and for the Project as a whole.

**A. The City's Reliance on Categorical Exemptions Is Appropriate**

1. Stacking CEQA Exemptions, Relying on Alternate CEQA Exemptions, and Relying on Prior CEQA Documents Is Appropriate

An agency may combine several exemptions to find an entire project exempt, and it may rely on alternate exemptions.

In appropriate circumstances, different exemptions may be found to apply to separate or sequential approvals for a single project. (See *CREED-21 v City of San Diego* (2015) 234 Cal.App.4th 488, 504 [upholding use of categorical exemption for revegetation project after completion of storm drain repairs approved under emergency exemption]; *Madrigal v City of Huntington Beach* (2007) 147 Cal.App.4th 1375 [upholding use of ministerial exemption for grading permit following prior application of different exemption for use permit for same overall project].)

Additionally, agencies may rely on alternate exemptions. In *Surfrider Found. v California Coastal Commission* (1994) 26 Cal.App.4th 151, the Coastal Commission issued permits authorizing the Department of Parks and Recreation to install devices to collect parking fees at state park beaches. The court found the collection of fees exempt under the statutory exemption provided by Public Resources Code Section 21080(b)(8) for the establishment of rates or tolls by a public agency to meet operating expenses. The court also held that installation of the fee collection structures was categorically exempt under Section 15303 of Title 14 of the California Code of Regulations ("CEQA Guidelines"), which exempts construction of small structures. Accordingly, it is appropriate for the City to rely on alternate CEQA exemptions for this Project. If any one of these exemptions is found not to apply, the City's actions can still be upheld on the basis of the remaining exemptions.<sup>15</sup>

One commenter argues that the City's reliance on exemptions for the Cottages and Mallory Projects is inconsistent with the City's previous preparation of an Mitigated Negative Declaration (MND) and Environmental Impact Report (EIR) for these projects; the entirety of both documents are available on the City's website<sup>16</sup> and are incorporated here by reference. However, the City is permitted to rely on exemptions from CEQA in tandem with previously completed environmental review. For example, the use of an addendum to evaluate an activity under CEQA's subsequent review provisions does not prevent the lead agency from also relying on any number of statutory or categorical exemptions.<sup>17</sup>

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<sup>15</sup> See *North Coast Rivers Alliance v Westlands Water Dist.* (2014) 227 Cal.App.4th 832 [upholding CEQA exemption determination on basis of some, but not all, cited exemptions].

<sup>16</sup> <https://ojai.ca.gov/ceqa-environmental-review/>

<sup>17</sup> See *Santa Barbara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 873; *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 700-701 [county not barred from arguing in court that (i) subdivision project's negative declaration satisfied CEQA, and (ii) project was exempt from CEQA]; *Bloom v. McGurk*

**B. City Is Not Required to Prepare a Subsequent or Supplemental EIR/MND**

Portions of the Projects Ojai covered by the proposed Development Agreement were previously analyzed in a certified environmental impact report and an adopted mitigated negative declaration. Specifically, the potential environmental impacts of the Mallory Way Project were analyzed in a certified environmental impact report (SCH Number 2008071083) (the “Mallory EIR”) and the potential impacts of the Cottage Project were evaluated in an adopted mitigated negative declaration (SCH Number 2007081154) (the “Cottages MND”).

The Mallory EIR analyzed the renovation of the existing seven residential units, demolition and replacement of 18 residential units, and construction of five new units. Upon project completion, the Mallory site would contain a total of 30 dwelling units with seven of them being deed-restricted affordable (one at low-income level and six at moderate income level) for 55 years. The Development Agreement does not modify, except to add relocation assistance, the original Mallory Project as analyzed under the Mallory EIR, it merely extends the permit to construct those units.

Similarly, the Development Agreement extends the permits for the Cottages Project. The Cottages Project, which proposes to renovate eight existing dwelling units and add two new dwelling units, for a total of 10 market rate units, was fully analyzed in the adopted Cottages MND. The Development Agreement also proposes adding two new 400 square foot dwelling units (one low income deed-restricted and one very-low income deed-restricted), for a total of 12 units and adds relocation assistance.

As stated above, the Mallory Project and Cottages Project as proposed in connection with this Development Agreement are nearly identical to the projects analyzed under the Mallory EIR and the Cottages MND. The only material modification is the addition of two new deed-restricted affordable units (approximately 800 square feet total) to the Cottages Project. A new EIR or negative declaration does not need to be prepared to address this minor modification because it will not result in any new significant impacts and therefore no additional mitigation measures would be required as a result of this modification. Furthermore, as detailed here, and in our other letters and presentations to the Council, there is no new significant information relevant to either Project that would trigger the requirement for a new EIR or MND.

To give a degree of finality to the results, CEQA includes a presumption against requiring any further environmental review once an EIR has been prepared for a project. Accordingly, Section 15162 of the

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(1994) 26 Cal.App.4th 1307, 1313 [noting that the court in *Committee for a Progressive Gilroy* relied on findings under both Section 21166 and the Class 1 existing facilities exemption]; *Committee for a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 864 [EIR not required in connection with changes to waste discharge levels for municipal sewage treatment facility based on coverage from prior EIR and application of the Class 1 existing facilities exemption].

CEQA Guidelines provides that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR or negative declaration shall be prepared for the project if the lead agency — in this case the City of Ojai — can make certain findings based on substantial evidence. Specifically, if an EIR has been certified or a negative declaration adopted for a project, subsequent CEQA review is only required and the agency determines that (1) substantial changes are proposed to the project require major revisions to the CEQA document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which require major revisions to the CEQA document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) New information of substantial importance, which was not known at the time the original CEQA document was adopted or certified, shows that the project will have a new significant effect, a more severe significant effect, will render a mitigation measure or alternative infeasible, or allows for new mitigation measures or alternatives that will substantially reduce one or more significant effects on the environment.

#### 1. No Substantial Changes to the Project

There have been no substantial changes proposed in the project which would require major revisions to the Mallory EIR or Cottages MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. With regards to the Mallory Project, there are no proposed changes to the previously analyzed project. As for the Cottages Project, the primary modification to the previously analyzed project is the addition of two small, deed-restricted units. These additions are made to existing structures and therefore, for example, there are no new significant biological or historic impacts, and certainly none that could not otherwise be mitigated to a less than significant level through implementation of the previously-identified mitigation measures. Additionally, regarding traffic (Vehicle Miles Travelled (VMT)), because the Cottages Project, even as modified, only includes four new units, the total vehicle trips per day would be approximately 14 — the Office of Planning and Research presumes that small projects (those that generate less than 110 ADT trips per day) have a less than significant impact. Accordingly, the minor change to the previously analyzed projects is not substantial and do not trigger major revisions to the Mallory EIR or Cottages MND.

#### 2. Substantial Changes to the Circumstances

No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions in the Cottages MND or the Mallory EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

By way of a few examples: (1) the existing land uses in the surrounding vicinity and within the two project areas have not undergone any substantial changes since they were described and analyzed in the CEQA documents; (2) the General Plan land use designations for the area have also not been changed; (3) the biological resources surrounding the project have not substantially changed in a manner that triggers new significant impacts. In fact, subsequent arborist reporting concluded that fewer trees would be impacted than previously analyzed and the proposed project would replace impacted trees, thereby enhancing the project site; (4) at the time of the submittal of the Mallory EIR and Cottages MND (2009 and 2007), California was in the midst of a drought (the first drought for which a statewide proclamation of drought emergency was issued) and thus the subsequent drought conditions do not constitute a substantial change to the project circumstances.<sup>18</sup> Therefore, no substantial changes have occurred with respect to the project circumstances that result in new or more severe significant hydrology impacts. Based on the foregoing reasons, the circumstances under which the Cottages and Mallory Projects is being undertaken have not changed substantially, and thus no revisions to the Cottages MND or Mallory EIR are required.

### 3. No New Significant Information

No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Cottages MND was adopted or the Mallory EIR was certified has become available. The modifications to the Mallory Project and Cottages Project anticipated under the Development Agreement do not include any new information of substantial importance regarding significant effects from development of these projects that were not previously discussed, identified, and analyzed in the prior CEQA documents. There has been no new information submitted that demonstrates that significant effects would occur that were not discussed in the previous documents and there has been no new information submitted to demonstrate that previously identified significant effects will be substantially more severe. The existing mitigation measures were found to be effective and feasible at the time of adoption of the Cottages MND and certification of the Mallory EIR, and there have been no substantial changes to the projects or the projects' circumstances that would change the mitigation measures.

Therefore, based on compliance with the City ordinances and the proposed changes to the approved project design, all other environmental effects on the Project will continue to not be significant. Therefore, in accordance with Section 15162 of the CEQA Guidelines, the adopted Cottages MND and certified Mallory EIR still apply to the Cottages Project and Mallory Project, respectively, and there is no substantial evidence that these projects as modified could have a potentially significant effect on the environment beyond what was previously analyzed.

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<sup>18</sup> See additional discussion below.

**C. There are No Significant Water Supply Impacts Associated with the Project**

**1. Drought Is Not New Information, and There Are No Significant Water Supply Impacts Associated with the Development Agreement**

Commenters raised claims that extreme drought has arisen in the City of Ojai and County of Ventura since prior approvals of the Cottages and Mallory Projects. In fact, drought has been with us in California since the beginning of land use planning. Drought has been discussed and considered and analyzed in all of the relevant water planning documents for the Casitas Municipal Water District (CMWD), and in the City's own planning documents.

The City's 2006-2014 Housing Element Environmental Impact Report (EIR) reports that – as of its 2012 publication – the “hydrologic period from 1945 to 1965 represents the longest drought on record for the Ventura River Basin.” Therefore prolonged periods of drought are a part of the City's history. The 2012 EIR for the fifth cycle Housing Element (2014-2022) further found that anticipated water supplies were adequate to serve the projected level of growth in that housing element (i.e., 371 SPL Overlay units) yet the City only constructed 88 units over this planning period.<sup>19</sup> In its adoption of the 2021-209 Housing Element, the City Council also expressly found that this 2012 EIR adequately analyzed any possible environmental impacts, which necessarily includes water supply impacts.<sup>20</sup> Given that 283 proposed residential units in the fifth cycle were never constructed—and thus had no impact on local water demands—it is spurious to claim that the Development Agreement would create new, significant water supply impacts.

Additionally, as discussed further below, CMWD's previous Urban Water Management Plans (UWMPs) planned for new development, including affordable housing. Specifically, Government Code section 65589.7 requires the City to transmit the Housing Element to CMWD in order for CMWD to plan for the water demand associated with new residential development. As such, the City and CMWD coordinate to ensure that drought conditions are considered as part of the water supply planning process.

Further, the commenter fails to acknowledge that the problem of aridification of the west is a regional issue being resolved by agencies of all levels of government. The California legislature made clear that only certain circumstances should limit the ability of water districts to deny service to affordable housing.<sup>21</sup> None of these circumstances are present here. In fact, as detailed below and in other correspondence, the Project will likely reduce water usage by half in spite of providing more than double the number of much needed units; thus being part of the solution, not the problem.

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<sup>19</sup> City of Ojai, 2021-2029 Housing Element, pp. 43-44, Tab A-2 (Oct. 12, 2021).

<sup>20</sup> Ojai City Council, Resolution 21-48, Sec. 2.

<sup>21</sup> Gov. Code, § 65589.7(b).

2. The Development Agreement Will Not Result in Increased Water Demand  
Because the New Units Will Be Much More Water Efficient than the Old Units  
they Replace

As described in our prior letter, the 67 new proposed residential units will replace 33 existing antiquated residential units and existing office space. The 67 new and upgraded units must be constructed with new water-efficient showers, bathroom, and kitchen faucets, washing machines, and toilets, along with leak-proof fittings, resulting in a net decrease in total water use. Any new landscaping will comply with California Department of Water Resources' Model Water Efficient Landscape Ordinance (MWELO) and use drip irrigation. Therefore, these new and refurbished units will use less water than the existing facilities due to massive improvements in water efficiency in modern building codes.

3. CMWD Has Allocated Water For Infill Residential Development Such as This,  
Especially Affordable Units

CMWD considers both residential development and drought in its water supply assessments and preparation of its Urban Water Management Plans.<sup>22</sup> Accounting for both drought and residential development in CMWD's assessment of water supply availability is not new. In fact, CMWD has evaluated potential residential development and drought in each recent UWMP and has never projected that demand would exceed available supplies even during drought conditions.<sup>23</sup>

As stated in our previous letter, the 2020 UWMP projects that it will have annually 2,761 AF reasonably available to the Ojai Water System over the 2025-2040 planning period.<sup>24</sup> This projection indicates that CMWD will reasonably have an annual buffer of 911 acre-feet (AF) available to supply water to the City over the next 15 years.<sup>25</sup> Based on fiscal year 2013-2014 data, CMWD served 2,700 residential service connections with a water demand of 1,738 AF.<sup>26</sup> These estimates mean that each residential service connection used approximately 0.64 AF in fiscal year 2013-2014. Conservatively assuming that residential demand remains constant, CMWD's annual buffer supply of 911 AF would

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<sup>22</sup> Wat. Code, § 10631(b)(1) & (d)(1).

<sup>23</sup> See CMWD, 2005 UWMP (Oct. 2005) available at

<https://www.casitaswater.org/home/showpublisheddocument/159/636896291070600000>; CMWD, 2010 UWMP (Jun. 2011) available at <https://www.casitaswater.org/home/showpublisheddocument/161/636896291073070000>; CMWD 2015 UWMP and Agricultural Water Management Plan (Jun. 2016) available at <https://www.casitaswater.org/home/showpublisheddocument/163/636896291075730000>; CMWD, 2020 UWMP (Jun. 2021) <https://www.casitaswater.org/home/showpublisheddocument/4108/637607539377570000>.

<sup>24</sup> CMWD, 2020 UWMP, Tab. 6-9 (Jun. 23, 2021).

<sup>25</sup> CMWD, 2020 UWMP, Tab. 7-2 (Jun. 23, 2021). Even in the more conservative estimates presented in the 2020 UWMP based on five year drought conditions, CMWD continues to project that supply would exceed demand by 319 AF in the worst year. (CMWD, 2020 UWMP, Tab. 7-4 (Jun. 23, 2021).)

<sup>26</sup> CMWD, Water Efficiency and Allocation Program, p. 4 (May 12, 2021) available at

<https://www.casitaswater.org/home/showpublisheddocument/4233/637690462660430000>.

permit the construction of 1,423 new residential units.<sup>27</sup> Further, under CMWD's Stage 1 water allocation, multi-family residential customers receive an annual allocation for essential health and sanitation of 84 hundred cubic (HCF), which equals approximately 0.19 AF.<sup>28</sup> Based on this Stage 1 water allocation, the annual buffer supply could support the essential water demands of approximately 4,795 residential units. Given that the Development Agreement proposes only 67 new and upgraded units, which will have efficient appliances and limited exterior landscaping, CMWD has ample water available in its annual supply buffer to support the proposed residential units.

Another recent CMWD study adopted an Ojai Water System demand estimate of 2,350 AF for planning beyond 2040.<sup>29</sup> Based on the long-term water supply analysis, CMWD estimated a potential, future water supply gap of 25 AF per year, which was within the margin of error and could "be met with a small additional delivery from the Casitas System if needed."<sup>30</sup> The study further evaluates a portfolio of projects available for CMWD to improve water supply reliability within the region to address potential demand gaps.<sup>31</sup> In light of the available information, CMWD clearly finds that "[e]ven with our drought and current lake level, Casitas has water resources for the future. The District is actively engaged in managing existing local water resources and planning for water security."<sup>32</sup>

In summary, CMWD has planned for drought and residential development within the City of Ojai. Drought and its potential impacts on water supply are not new and have been evaluated by both the City and CMWD. Public commenters alleging that drought conditions preclude new residential development within the City are unsupportable.

Thus, beware of commenters using unsupported assertions about drought, water supply, and aridification to further thinly veiled NIMBYism. Such arguments have been used too long to stop new residential development in Ojai.

**D. The Project Does Not Result In Any Significant Biological Impacts**

Project opponents point to tree impacts or the idea that tree impact information is too old to be relevant and should be redone. In reality, the potential impacts to trees by at all four sites have been

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<sup>27</sup> This estimate is conservative given that the water demand has reduced overtime in response to drought conditions and the residential service connections account for parcels with various home sizes and irrigated acreage.

<sup>28</sup> CMWD, Water Efficiency and Allocation Program, p. 4 (May 12, 2021).

<sup>29</sup> CMWD, Draft Comprehensive Water Resources Plan, p. 22 (Jun. 8, 2020) available at <https://www.casitaswater.org/home/showdocument?id=2553>

<sup>30</sup> CMWD, Draft Comprehensive Water Resources Plan, pp. 31-32 (Jun. 8, 2020) available at <https://www.casitaswater.org/home/showdocument?id=2553>

<sup>31</sup> CMWD, Draft Comprehensive Water Resources Plan, pp. 54-64 (Jun. 8, 2020) available at <https://www.casitaswater.org/home/showdocument?id=2553>

<sup>32</sup> CMWD, Casitas Water Security <https://www.casitaswater.org/your-water/casitas-water-security> (accessed on Oct. 24, 2022).

considered and are addressed via conditions of approval in the Development Agreement currently before you. In addition, the arborist has recently conducted yet another site visit in October 2022 and concluded:

**“The proposed landscape plan will mitigate for any impact or removal of existing trees on these properties.** The sites will benefit from the proposed landscape design and the required maintenance with the use of introducing native plant understory and a water-efficient irrigation system. Rain capture through the use of infiltration swales and permeable paving will help to replenish the groundwater aquifers and improve the health of the site’s environment. The proposed designs for these properties will enhance the charming character of the cottages as well as make them more sustainable, viable, and safe. If the proposed projects were not to move forward, many of the existing trees will continue to deteriorate and ultimately fail in the near future. **The projects as proposed will have minimal impact to the existing trees and ultimately will add to the biodiversity of the site and enhance the urban landscape. This project will also reduce the fire risks associated with the site as it currently exists.”**

With regard to bird and bat nesting, it is obvious on the proposed landscape plans that existing tree canopy will be largely protected, and the Project will result in a higher number of trees than existed before. The proposed replacement trees are of substantial size – not saplings – as suggested by opponents. For example, replacement trees range in size from 24” box being 12 to 16 feet tall at installation, to 72” box trees which are 18-22 feet in height at installation. In addition, the four sites will be developed in a phased manner over a 10 year period, which further avoids potential disturbance to nesting birds and bats in the City.

#### **E. The Project will Not Significantly Impact Historic Resources**

Project opponents make generalized claims that the Development Agreement would significantly impact historical resources. Under the CEQA Guidelines, a project must cause a substantial adverse change in the significance of an historical resource to have a significant effect on the environment.<sup>33</sup> Historical resources are listed in the California Register of Historical Resources, included in a local register of historical resources or deemed significant based on certain criteria.<sup>34</sup> To add a resource to the local register of historical resources, the agency must have “officially designated or recognized [it] as historically significant by a local government pursuant to a local ordinance or resolution.”<sup>35</sup> To otherwise be designated as a historical resource, the City Council must establish, based on substantial evidence in light of the whole record, that the resource is “historically significant based on certain factors, like its (1) association with events that have made a significant contribute to the broad patterns of California’s history and cultural heritage; (2) association with the lives of persons

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<sup>33</sup> Pub. Res. Code, § 21084.1; CEQA Guideline, § 15064.5(a)(1).

<sup>34</sup> Pub. Res. Code, § 21084.1

<sup>35</sup> Pub. Res. Code, § 5020.1(k).

important to our past; (3) embodiment of district characteristic of a type, period region or method of construction or poses high artistic values; or (4) likely to yield information important in prehistory or history.<sup>36</sup>

Here, none of the Project sites are listed in the California Register of Historical Resources, nor have any of the sites been officially designated on a local register of historical resources by a City ordinance or resolution. The City's Historic Preservation Commission further has considered the Cottages and Mallory Projects and decided not to place either project on a local register of historical resources list or encourage the City Council to designate these sites as historically significant based on substantial evidence.

Further, the Mallory EIR and Cottages MND were fully analyzed under CEQA regarding potential historic impacts and those analyses concluded that neither resulted in significant impacts to historical resources. The Mallory portion of the Project has not changed, and therefore the prior analysis still applies and is complete. The Cottages portion of the Project is mostly identical – two approximately 400 square foot affordable units were added on top of an existing garage. As stipulated in the CR-1 from the 2007 MND, severely deteriorated historic features may be repaired or replaced based on the severity of deterioration. Any replacement or repairs must also be undertaken under the guidance of a qualified historic preservation professional. Given the level of deterioration seen in the ancillary buildings, repair and replacement is warranted. In order to comply with CR-1, all proposed renovations to the buildings will be in conformance with the Secretary of the Interior's Standards for Rehabilitation and will be reviewed by a qualified historic preservation professional. The added square footage is proposed to match the design of the approved Cottages portion of the Project. Accordingly, the City has thoroughly considered these project sites and found that the Cottages and Mallory Way portions of the Project as proposed under the Development Agreement would not result in a significant impact to historical resources. Opponents claims to the contrary are unsupportable.

Similarly, the Montgomery Way and World University sites are not designated on the California Register of Historical Resources or the City's local registry. Montgomery Way is an empty lot. The World University building identified as 107 North Ventura was constructed in 1949. The property was not identified as potentially significant or a known historical resource in City of Ojai Landmark List, City of Ojai Historic Context Statement, Historic Downtown Ojai Walking Tour Brochure, Historic Resources Reconnaissance Survey, and the Historic Resources Screening Survey. In addition to the review of local sources, the California Office of Historic Preservation (OHP) Built Environment Resource Directory (BERD) and the National Register of Historic Places (NRHP) Database were also reviewed and the property was not found on either list.

While the property is listed in the Reconnaissance Survey table within the report, importantly it was not assigned an Integrity score or a Visual Evidence of Significance (VES) score like other surveyed

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<sup>36</sup> CEQA Guideline, § 15064.5(a)(3); see also Pub. Res Code, § 5024.1(h)

properties. Furthermore, there were multiple buildings identified in the Reconnaissance Survey document as having potential connections to the City Hall, but this property was not one of them. The identified properties with potential connections to City Hall were 311 South Ventura Street, 415 South Ventura Street, and 401 South Ventura Street. Thus, there is no evidence to support that the World History site is historic or that interior renovations of the site to convert it to housing will result in any impact to any historic resource.

## **VII. Cumulative Impacts**

Project opponents have raised concerns that the Project proposes development on four different sites around the City and that the City's CEQA analysis may violate CEQA's rules against piecemealing. This is incorrect for a number of reasons. First, each development at each site provides independent utility. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223; *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 736 [piecemealing not an issue where each project has independent utility]). Each new and refurbished housing unit in the City furthers the City's goals to build more housing and to increase the efficiency and safety of the City's housing stock. Additionally, the development of one site does not foreclose mitigation or any alternative for another site. (*Save Tara v. City of W. Hollywood* (2008) 45 Cal.4th 116, 139.)

Furthermore, concerns about piecemealing CEQA analysis stems from worries that doing so will minimize the impact of the project as a whole. This too is not the case with this Project because as is discussed here and in our prior communication, and the City's analysis, the Development Agreement as a whole does not result in any cumulative impacts. (See *Golden Door Props., LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 527 [if there are no cumulative impacts, there is no piecemealing issue].)

The project will occur across a ten year period, on four separate sites throughout the City. Furthermore, each project is relatively small. The Development Agreement only approves the construction of four new units at Cottages, and the Cottages development as a whole is phased where four units would be built first, then the remainder of the site will be built out later. No new units are proposed for Mallory and the World University building already exists, it will be converted to residential units. The largest new project is the Montgomery Project, which is entirely affordable units and only exists of 15 total units on less than five acres of urban infill land.

The general plan EIR 1997 contemplated and plans for 3,838 units by 2050. The City is currently at 3,414 units per the 2021 Housing Element. The Development Agreement runs through 2032 and only adds 34 new units.

Water demand has already been planned for in the UWMP for buildout of affordable units. In its transmittal of planning documents to Casitas, they have been alerted to the planned growth for the

City and so have been planning for it. The prior housing element planned for 371 units, the current housing element plans for 53.

In sum, the City has been planning for growth in the City for decades, the redevelopment of 33 units plus the addition of 34 new units (27 of which are affordable) is a notable project for the City of Ojai (which has not managed to construct any affordable housing in decades<sup>37</sup>), but in reality the project is small and dispersed in time and space across the City and therefore will not result in any significant project level or cumulative environmental impacts.

#### **VIII. Development Agreement Opponents Erroneously Claim Inconsistency with 2021-2029 Housing Element Policies, and General Plan Policies of the Conservation and Circulation Elements.**

The City Council has substantial evidence that the Development Agreement consistent with the 2021-2029 Housing Element and General Plan policies in the Conservation and Circulation elements.

##### **A. Project Consistent with Housing Element**

The Project is consistent with 2021-2029 Housing Element Policy H-4 which is “The City shall adopt policies, programs and procedures to facilitate attainment of RHNA goals, with particular emphasis placed on the needs of persons and families of lower income households (including extremely low income) and those with special needs (elderly, disabled/developmentally disabled, female-headed households, large households, homeless, and farmworkers).”

The Development Agreement does in fact provide low and very low units toward the City’s goal. In addition, it is consistent with the overarching Goal under which policy H-4 is just one of several policies. The overarching Goal being Goal 2: “Provide a continuing supply of affordable housing to meet the needs of existing and future Ojai residents in all income categories.”

Additionally, the very next policy listed, Policy H-5 under that same “Goal 2” is “H-5 The City shall actively seek and formulate partnerships with for-profit and non-profit developers to produce affordable housing and provide assistance in support of project applications to achieve development objectives.” ...Which is exactly what this project is doing.

Next, opponents assert inconsistency with the 2021-2029 Housing Element Policy H-15 which states, “H-15 The City will promote integration of all economic and population segments in each residential project; however, it is recognized that scales of economy and management efficiencies require that certain projects are made exclusive to target groups.” Again there is no basis to assert inconsistency.

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<sup>37</sup> The City has reported ADU development under a certain level of affordability. An important distinction is that none of these are deed restricted and therefore not truly affordable housing.

In fact, each site within the Project provides housing units at a variety of affordability levels including market rate.

**B. Project Consistent with Conservation Element**

The Conservation Element expresses the community's desire to protect water quality and supply, and biological resources. With regard to water, policies include 1) ensuring adequate water supply, 2) protecting the watershed and water recharge areas and thereby 3) protecting water quality. As previously discussed, the water purveyor to the City is the CMWD, who has, in their UMWPs, reported that plenty of water is available to serve the area. In addition, the projects will be required to conform to modern standards dictating efficient water use both inside (low flow fixtures per CalGreen), and outside. The proposed plant palettes include both native and drought tolerant plants.

With regard to water quality, in addition to drainage improvements proposed, the Projects will also conform to current standards for stormwater protection both during construction and after.

Specifically, during construction, stormwater protections are mandated by the state for project sites over an acre (Stormwater Pollution Prevention Plan or SWPPP). North Ventura proposes internal upgrades only however erosion control measures will be implemented as needed, and the South Montgomery project will also be required to conform to local controls for construction sites as well.

After construction, project features will ensure continued compatibility with this policy. The Mallory Way portion of the project proposes features such as permeable pavers and an infiltration swale.

And, Cottages proposes to improve drainage and provide for water recharge. Curbs will be adjusted at World University site to improve drainage, and Montgomery will include large areas of pervious surfaces, and features such as covered trash enclosures. The Project will therefore be consistent with these policies as it will conserve water over the baseline condition, and make certain stormwater improvements that will enhance the quality of water resources.

In terms of biological resources, the General Plan states that the community strives to protect and enhance biological resources, and allows no net loss of resource value, and requires minimizing the loss of resource value even to resources that are abundant but important or of moderate value. The Project consists of development on four infill sites in the City. None of these sites are identified by the City's General Plan EIR as "Areas of Biological Significance" which maps both moderate and high significance areas.

Even still, the project is consistent with these resource protection policies in that after development of the project, each of the four properties will have more than the current number of trees, both protected oaks and others such as black walnut. In replacing these trees with large specimens (e.g. sizes ranging from 24" box up to 72" box at Mallory which range from 12 feet to 18-22 feet tall at installation) the tree canopy will be enhanced providing higher quality habitat for birds and bats than exist on these sites at this time. The Mallory Way and Cottages portions of the Project each have been previously analyzed for potential impacts to biological resources (with an arborist report update as

recent as October 2022), and they will continue to be required to abide with protections such as pre-construction nesting bird surveys and tree protection measures to protect critical root zones. The World University site is an existing developed site therefore no impacts are anticipated to biological resources in converting the existing building from commercial to residential use. The Montgomery site has been surveyed for biological resources most recently (May 2022) and through implementation of four project design features to protect western mastiff bats, the development will have a less than significant impact on biological resources, and it also will not contribute to cumulative impacts to these resources in the region.

Because 1) none of the sites are mapped as having moderate or high significance in terms of trees or woodlands in the City's General Plan EIR, 2) biological resource investigations have been performed on the sites where resources could potentially be impacted, and 3) the project has included project design features requiring pre-construction surveys, and protection and replacement of resources, the project will be consistent with the Conservation Element policies for protection and enhancement of biological resources.

**C. Project Consistent with Circulation Element**

Last, a public comment letter suggests that the Projects is not consistent with the City's circulation element because it does not limit the intensity of future development to that which can be accommodated on area roadways, or provide for the efficient movement of vehicles by designing, constructing, and maintaining a roadway circulation network which will function at an acceptable level of service (LOS).

These policies (CIR-1 and CIR-2) have existed since 1997 and were in effect during the original approval of Mallory and Cottages. The Mallory and Cottages environmental analyses each considered potential traffic impacts in the EIR and MND respectively, and the City's approvals found the projects not to have any Class 1 traffic impact and the approvals found the projects to be consistent with the Circulation Element, including this policy.

In addition, the Project is an urban infill project, which as described above, is the most efficient way for cities to be developed and reduce overall VMT and traffic.

Public comment letters have also asserted inconsistency with the Circulation element by not preparing a traffic study. Again, the Mallory and Cottages projects were analyzed for traffic impacts. Further, in the discussion of cumulative impacts for the Mallory project, the Cottages project was identified and analyzed. Additionally, our October 18, 2022 attached a traffic analysis which explains that the Project sites will not individually or collectively have a significant impact to traffic. In fact, the various project sites have such minimal potential traffic impact they qualify for being screened out under OPR's guidance. Per OPR's technical advisory, lead agencies may screen out VMT impacts using project size, maps, transit availability, and provision of affordable housing.

Here, the various sites in the Project are screened out from needing further VMT analysis in recognition that they would not result in significant impacts either individually or cumulatively because they are Small Projects<sup>38</sup> and they include Affordable Residential Development.<sup>39</sup>

Additionally, it should be noted that the Cottages and Mallory portions of the project will result in improved walking trails for the community which will further improve circulation.

## **IX. Approving the Development Agreement Is Right for Ojai**

The Development Agreement presents an unprecedented opportunity for Ojai. This Development Agreement will provide deed-restricted affordable units for 55 years, phasing that will ensure the construction of all the affordable units before the remainder of the market units, and novel tenant protections for the City.

This is not a question of maintaining the status quo versus the new development. Changes at these four properties will occur; the Development Agreement simply allows the City to dictate the process. Without the Development Agreement, the City will have no deed-restricted units, none of the extra tenant protections, and the Ojai Bungalows can pursue development at the four sites in accordance with its legal rights.

The City Council must not be swayed by NIMBYs seeking to scare you into inaction using generalized claims of environmental harm, while they ignore the actual facts which demonstrate a lack of environmental impacts associated with the Development Agreement and the science supporting infill development. Change can be scary, but this change is right for Ojai because it protects some of Ojai's most vulnerable citizens, while improving the City's housing stock and helping to build a solid foundation for the City's future.

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<sup>38</sup> Presumption of Less Than Significant Impact for Small Projects. "Absent substantial evidence indicating that a project would generate a potentially significant level of VMT, or inconsistency with a Sustainable Communities Strategy (SCS) or general plan, projects that generate or attract fewer than 110 trips per day generally may be assumed to cause a less-than-significant transportation impact."

<sup>39</sup> Presumption of Less Than Significant Impact for Affordable Residential Development. The same Technical Advisory goes on to explain that "Adding affordable housing to infill locations generally improves jobs-housing match, in turn shortening commutes and reducing VMT. Further, "low-wage workers in particular would be more likely to choose a residential location close to their workplace, if one is available." In areas where existing jobs housing match is closer to optimal, low income housing nevertheless generates less VMT than market rate housing. Therefore, a project consisting of a high percentage of affordable housing may be a basis for the lead agency to find a less-than-significant impact on VMT. Evidence supports a presumption of less than significant impact for a 100 percent affordable residential development (or the residential component of a mixed-use development) in infill locations. Lead agencies may develop their own presumption of less than significant impact for residential projects (or residential portions of mixed use projects) containing a particular amount of affordable housing, based on local circumstances and evidence. Furthermore, a project which includes any affordable residential units may factor the effect of the affordability on VMT into the assessment of VMT generated by those units."

Mayor Stix and Council

October 25, 2022

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We respectfully request that this Council make the right decision for the City of Ojai and its residents and approve the Development Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth Collins".

Beth A. Collins

Cc: Matthew Summers, City Attorney

24826208.7

October 13, 2022

Beth A. Collins  
Attorney at Law

**VIA EMAIL**

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Mayor Stix and Councilmembers  
Ojai City Hall  
401 S. Ventura Street  
Ojai, CA 93023

**RE: Becker Development Agreement October 18, 2022 Council Hearing**

Dear Mayor Stix and Councilmembers,

We represent Ojai Bungalows LP and Greenhawk LLC (collectively, “Ojai Bungalows”), the owners of the properties at 312 W. Aliso Street (“Cottages Project”), 304 S. Montgomery, 412 Mallory Way (“Mallory Project”), and 107 N. Ventura Street (“World University Project”) in the Development Agreement being considered on October 18, 2022 (“Development Agreement”).

Since the September 23, 2022 hearing, our clients met with the City Council ad-hoc committee twice and agreed to significant revisions to the Development Agreement and the associated Phasing Plan and Tenant Relocation Plan. These revisions (a) increased the number of affordable units (adding one low and one very-low income unit), (b) modified the phasing to ensure that affordable units are constructed first, and (c) increased protections for current tenants. **With these changes, we ask that this Council approve the Development Agreement as proposed, consistent with your staff’s recommendation.**

The proposed Development Agreement is good for the City of Ojai (“Ojai” or “City”) for many reasons.

- (1) **The Development Agreement provides 27 units** of much needed deed-restricted affordable housing for 55 years. **Currently Ojai has no deed-restricted units** on these four properties.
- (2) **The new Phasing Plan ensures the construction of new affordable units first.** This will help ensure that all current tenants who qualify for affordable units can shift into similar deed-restricted units at their qualified level of affordability.

**(3) The revised Tenant Relocation Plan provides all current tenants with reimbursement of up to \$2,000 in moving costs as well as first-in-line priority for similar new units.** All current tenants who qualify for an affordable unit can shift into a similar newly refurbished or constructed deed-restricted affordable unit or, if a similar unit is not available at their level of affordability, they can move to a new similar unit and pay rent at the level of affordability that they qualify for one year. If a unit is not available (which we do not expect, but just in case we built in this protection) the Ojai Bungalows will provide a payment of a year's worth of their current rent.

Overall, the units proposed in the Development Agreement are 40 percent deed-restricted affordable and 60 percent market; and the tenant protections go far beyond anything required under existing law. This is just the type of project that Ojai needs.

**I. The City of Ojai Desperately Needs Additional Housing, Especially Updated Deed-Restricted Affordable Housing**

Ojai is confronted with a lack of affordable rental housing for its residents. As reported in the City's 2021-2029 Housing Element:

- there has not been a new residential unit built in Ojai since 2013,<sup>1</sup>
- units built in the last 32 years—since 1990—comprise just 6.5 percent of the City's housing stock, and
- there are currently zero privately owned deed-restricted affordable units within City limits.<sup>2</sup>

Council Members and many members of the public have expressed their own challenges with finding appropriate rental accommodations within City limits. The lack of affordable rental units is not the only issue. Existing units are aging, and some lack basic kitchen and plumbing facilities. According to the City's 2021-2029 Housing Element, 152 renter occupied units lack a complete kitchen and 78 renter occupied units lack complete plumbing. In addition, per the City's Housing Element, 14 percent of renter-occupied households are considered overcrowded. The Development Agreement will help solve this issue by providing 27 refurbished or new deed-restricted units for 55 years. This amount of new affordable housing is unprecedented in Ojai and provides a much needed opportunity for the community.

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<sup>1</sup> As reported in the City's 2021-2029 Housing Element dated October 13, 2021.

<sup>2</sup> Whispering Oaks is owned by the Ventura County Housing Authority.

## II. The City's Housing Obligation to Residents

Ojai has not been keeping pace with the housing needs of residents. In recognition of the gravity of the issue, the City's Housing Element includes Council-Approved Goals, Policies and Actions, which includes Policy H-5:

***"The City shall actively seek and formulate partnerships with for-profit and non-profit developers to produce affordable housing and provide assistance in support of project applications to achieve development objectives."***

Additionally, Ojai's Housing Element outlines a plan to meet Regional Housing Needs Allocation ("RHNA") obligations between 2021 and 2029 which includes plans to provide 53 new housing units: 13 Very-Low, 9 Low, 10 Moderate and 21 Above Moderate affordable units. The proposed Development Agreement will provide 27 new deed-restricted affordable units for 55 years (over half of Ojai's RHNA obligation of 53 units).

Ojai's working population—of which educators make up 29.7 percent, travel and leisure industry workers make up 30.9 percent, and retail workers make up 9.4 percent—need functional places to live, and options when it comes to the size, location, and type of unit. An employee of a local business or school, who also lives within City limits, is more likely to spend a larger portion of their dollars within the City, fueling a robust economy. That same working individual, if able to live within City limits, also would burn less fossil fuel and spend less time on Highway 33 during peak commute hours. Additionally, when that person lives in a modern housing unit, they use far less water as compared to living in an older structure.

## III. The Development Agreement Provides Significant Benefits to Ojai's Residents

The Development Agreement provides the following benefits to the City of Ojai:

- **Deed Restricted Affordable Housing Units:** The Development Agreement would provide 1 Very-Low, 6 Low, and 20 Moderate deed-restricted affordable housing units, contributing to the availability of much needed affordable housing for City residents. The 27 housing units would be deed-restricted for 55 years. These would be the first deed-restricted affordable housing units in the City of Ojai.
- **RHNA Obligations:** The 27 deed-restricted affordable housing units associated with this Development Agreement would help the City meet its RHNA obligations described in the City's Housing Element. In fact, it would provide over half of the 53 RHNA units that the City needs.

- **40 Additional Market Rate Units for the Community:** The Development Agreement provides for 10 market rate condominium units that will remain rentals for 10 years and 30 additional market rate units. These additional, modernized market rate units will provide more, much-needed updated housing for City residents.
- **Updated Housing Stock:** Much of Ojai's housing stock is old, including the units at the Cottages (built around 1929) and Mallory (built around 1947-49). The refurbished and new residential units will comply with updated building codes, meaning that they will have increased water and energy efficiency and meet modern earthquake standards. This will provide additional public health and safety benefits to the residents and the community.
- **Robust Residential Relocation and Assistance Plan that Vastly Exceeds Protections in State or City Code:** Ojai Bungalows is committed to protecting existing residents from displacement and is proposing a Residential Relocation and Assistance Plan that provides greater protections to tenants than exist under State law or the City's Municipal Code. The Development Agreement provides for financial assistance and replacement accommodations to current tenants at the Cottages Project and Mallory Project. In addition to monetary compensation, Becker will proactively phase construction on the four properties prioritize construction of affordable units. This phasing will provide more options for replacement housing for current tenants (especially those that qualify for affordable units), thereby minimizing the need for residents to find other accommodations on their own.
- **The Avoidance of Costly Litigation:** The Development Agreement would prevent costly litigation which would require the City to pay its own attorney's fees and costs, and which would place the City at risk of paying Ojai Bungalows' attorney's fees as well.

#### **IV. Misinformation About the Benefits of the Development Agreement**

Significant misinformation has been circulated about the status of the existing units at the Cottages and Mallory Projects. Most significantly, some have claimed that the 33 existing units at Cottages and Mallory Projects are affordable units based on the current incomes of the current tenants. Many misunderstand, however, that even if those units are inhabited by lower income people now, that does not make those units permanently protected affordable units such as those offered under the Development Agreement.

The current units have no deed-restrictions. Yes, some of the residents may qualify for affordable housing. And yes, some of the residents may be paying low rent. But that does not mean that the units in which those tenants currently live are deed-restricted affordable housing. They are not.

The City has taken the position that if the existing tenants qualify for affordable housing, the City cannot now issue extensions for the Design Review Permits ("DRP") and other entitlements to

demolish or significantly refurbish the Cottages or Mallory Projects without triggering the City's requirement for replacement affordable housing. As counsel for Ojai Bungalows, however, we disagree for reasons detailed below.

But even without any litigation, the Ojai City Attorney has acknowledged that Ojai Bungalows could raise the current rents and/or evict the current tenants (in compliance with existing law) and, if it did so, all of those units could be refurbished without any requirement that they become deed-restricted affordable units. Also, the Cottages project received a final tract map consisting of 10 legal lots. The Ojai City Attorney also admits that each lot could be sold off individually and, if that happened, the City's Replacement Housing provisions would not apply.

Therefore, without the Development Agreement, the Ojai Bungalows could evict the current tenants or raise their rent at any time in accordance with applicable law. Once the units are empty or are being rented at market rate, the City's Replacement Housing provisions would not be triggered and the owner could simply apply for a new DRP to develop the properties without any replacement housing or tenant assistance obligations. Ojai Bungalows could also sell the already-recorded 10 lots at the Cottages to separate individual owners, and all 10 units could automatically be upgraded to market rate units. Only with the Development Agreement is the City of Ojai guaranteed deed-restricted units for the Cottages and Mallory Projects.

#### **V. Potential Litigation Risks Without the Development Agreement**

Ojai Bungalows has a number of claims against the City which it has not yet pursued. Should the City opt to deny the Development Agreement and refuse to grant the requested extensions for the Cottages and Mallory Projects, Ojai Bungalows will likely be forced to pursue litigation to protect its rights. There are numerous claims it can bring against the City some of which are detailed below.<sup>3</sup> These claims will not only subject the City to paying its own attorneys' fees and significant administrative burdens; some of the claims also may expose the City to significant additional costs associated with paying Ojai Bungalows' attorney's fees.

##### **A. The Housing Accountability Act Prohibits the City of Ojai from Asserting that Extension of the Mallory or Cottages Project Approvals Triggers the 2013 Replacement Housing Provisions**

The stated purpose for Council's appeal of the Planning Commission-approved time extension for the Cottages and Mallory Project approvals in April 2019 was to determine whether the Replacement Housing provisions, adopted by Council in 2013, applied to the Projects, but for reasons detailed below, these City Code provisions do not apply to the Project approvals under the Housing

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<sup>3</sup> Pending Public Records Act (Gov. Code, § 6250 et seq.) requests submitted on behalf of Ojai Bungalows may uncover addition bases for legal claims against the City.

Accountability Act (“HAA”). First, the Cottages and Mallory Projects only are required to have complied with applicable, objective City standards in effect when the original Project applications were deemed complete. Second, even if the City could have legally applied the Replacement Housing Policy and Ordinance to the extension applications for Cottages and Mallory Projects, the HAA includes a strict 30-day deadline for the City to have informed Ojai Bungalows in writing that it believed that the Replacement Housing Policy and Ordinance applied to the Project approval extensions, and the City missed those deadlines, so the applications are automatically deemed to comply with the City’s requirements. Third, the HAA applies to the extensions and the City cannot deny the applications for the Project approval extensions because it cannot make the required findings under the HAA. Thus, for many reasons, the HAA prohibits the City from applying the Replacement Housing Policy and Ordinance to the extensions for the Project approvals for Cottages and Mallory Projects.

1. The Cottages and Mallory Projects Were Found Consistent with Applicable City Policies and Ordinance When They Were Originally Approved Such That The 2013 Housing Element Policy and the City’s Replacement Housing Ordinance Do Not Apply to the Cottages and Mallory Project Approvals

Under the HAA, a housing development project must only comply with the applicable, objective general plan, zoning and subdivision standards “in effect at the time that the housing development project’s application is determined to be complete...” (Gov. Code, § 65589.5(j).) Here, both the Cottages Project and Mallory Project were deemed complete and consistent with the applicable, objective City standards, and approved by the City on November 27, 2007 and June 26, 2012, respectively.

The City’s proposal to the apply the 2013 Replacement Housing Policy and Replacement Housing Ordinance, adopted after the Projects were deemed complete and approved as consistent with City standards in effect at the time of the approval, contravenes the intent of the HAA. Specifically, the Legislature enacted the HAA to “meaningfully and effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects” and “to afford the fully possible weight to the interested of, and the approval and provision of, housing.” (Gov. Code, § 65589.5(a)(2)(K), (L).) Accordingly, the City should be precluded from applying the subsequent 2013 Replacement Housing provisions to the Cottages and Mallory Projects for the requested extensions given that these requirements were not in effect when the applications were deemed complete and consistent with the City’s standards.

2. The City Failed to Inform Ojai Bungalows that the 2013 Replacement Housing Policy and Ordinance Purportedly Apply to the Cottages and Mallory Projects Within 30 days of the Extension Application, So Under the HAA, the City is Now Barred from Making the Claim

Under the HAA, when a local agency “considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision ... it shall provide the applicant with *written documentation* identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity ... (i) *Within 30 days of the date that the application for the housing development project is determined to be complete...*” (Gov. Code § 65589.5(j)(2)(A)(i) [emphasis added].) If the local agency fails to provide this written documentation, the “housing development project *shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.*” (Gov. Code § 65589.5(j)(2)(B) [emphasis added].)

**Cottages Project.** Here, Ojai Bungalows requested a time extension on an application for the Cottages Project on approximately March 15, 2019, when they were rejected from pulling their building permits. Under the HAA, the City had 30 days from the application—i.e. on or before April 15, 2019—to inform Ojai Bungalows, in writing, whether the application violated any objective standards. As the City failed to provide written communication to the applicant stating any violation of objective standards on or before April 15, 2019, the Cottages DRP extension was automatically “deemed consistent, compliant and in conformity with” applicable City policies and ordinances, including but not limited to the 2013 Housing Element Policy and Replacement Housing Ordinance on that date.<sup>4</sup> As such, the City’s reversal of its position on May 14, 2019—approximately a month after the application was deemed consistent under the HAA—was untimely.<sup>5</sup> Thus, the City is forbidden from retroactively enforcing Replacement Housing provisions on a project that has already been deemed compliant with the applicable City standards.

Furthermore, the City itself has found to the contrary—that the Housing Replacement Policy and Ordinance do not apply to either Project. Specifically, the City acted on the Cottages Project multiple times without ever asserting that the 2013 Housing Element Policy and Replacement Housing Ordinance applied to the Project. For example, the City’s Planning Commission considered the Cottages Project at no fewer than 7 public hearings in 2016 (February 17, March 2, March 16, June 1,

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<sup>4</sup> The HAA applies to any votes for “any required land use approvals or entitlements necessary for the issuance of a building permit[,]” which necessarily includes extensions under the City’s Code. (Gov. Code § 65589.5(h)(6); see HCD, Housing Accountability Act Technical Assistance Advisory, p. 19 (Sep. 15, 2020).)

<sup>5</sup> The City put the time extension on a Planning Commission agenda for April 3, 2019 with a corresponding staff report and findings dated March 27, 2019 stating the project was consistent. City Council then considered the item on April 3, 9, and 23, however, it was not until May 14 that staff had reversed their position and stated the time extension was rejected.

June 15, and August 17) and once again in October 2017 and never applied the Replacement Housing provisions to the Project. The Planning Commission resolution in approving the 2017 time extension (2017-2018) found “that pursuant to the findings and conditions contained wherein that the proposed time extension for Design Review Permit are consistent with the Ojai City Code and General Plan.” This language is nearly identical to the prior 2016 time extension and modification approvals indicating that the City has long properly treated the 2013 Replacement Housing requirement as inapplicable to the Cottages Project.

**Mallory Project.** The City similarly failed to provide written notification within 30 days of it finding the Mallory Project time extension application complete. The time extension for the Mallory Project was submitted May 15, 2017, and not acted upon in any fashion<sup>6</sup> until staff discovered the error some time ahead of the February 20, 2019 Planning Commission hearing. Certainly, by the time the City agendized the time extension for the February 20, 2019 hearing, the City must have made the determination that the time extension application was complete in order to place it on an agenda for consideration.<sup>7</sup> As such, no later than March 22, 2019 the City was required to inform the Ojai Bungalows whether the Mallory Project violated the objective City standards in any way. (Gov. Code, § 65589.5(j)(2)(A)(i).)

Instead, both staff and the Planning Commission acted to recommend approval of the time extension to the City Council. In the Administrative Report for that February 20, 2019, Planning Commission meeting, the City recommended its approval stating that the project “continues to conform with the [Ojai Municipal Code [“OMC”]] policies and the General Plan,” and acknowledged that “the revised conditions of approval as described above and contained in Attachment C do not change that the project that [sic] continues to conform to the OMC and policies of the General Plan.” It was not until the April 9, 2019 City Council hearing—more than 18 days after *the latest possible date* the time extension application could have been “deemed consistent” with City policies and ordinances—that the City Council moved to continue the item for 60 days in order to assess whether the Mallory Project needed to comply with the City’s Replacement Housing provisions to issue the time extension. This continuation also does not constitute “written documentation” that the Mallory Project extension was inconsistent with City policies and ordinances under the HAA, since it merely directs further staff evaluation. Accordingly, the City failed to meet the HAA deadline for the Mallory Project extension

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<sup>6</sup> Per City Council Agenda Report dated March 25, 2019 for the April 9, 2019 City Council hearing, “The applicant’s request was submitted to the City in a timely manner. However, due to the Community Development Director position becoming vacant in early 2017, the time extension was not processed. The project was recently reassigned to a new planner who discovered the error.” This error further may violate the Permit Streamlining Act (Gov. Code § 65920 et seq.) and Subdivision Map Act (Gov. Code § 66410 et seq.).

<sup>7</sup> The exact date that the City found the application for the time extension to be complete may be revealed during review of documentation on the Mallory Project requested pursuant to a pending Public Records Act (Gov. Code § 6250 et seq.). Further, the time extension application may have been deemed complete under the Permit Streamlining Act.

and must deem the Project extensions consistent with applicable City policies and standards and find that the Mallory Project extension is consistent.

In short, the City failed to comply with the HAA's strict deadlines for informing Ojai Bungalows that its extension applications were inconsistent with the 2013 Replacement Housing Policy and Ordinance. Thus, the extension applications were deemed consistent with these standards and the City and the City cannot apply the standards to either the Cottages or Mallory Project.

3. The City Also Cannot Find that the 2013 Housing Element Policy and the City's Replacement Housing Ordinance Apply to the Extensions of Either Cottages or Mallory Project Approvals Nor Use these Findings to Deny the Project Consistent with the HAA

The City further cannot make its proposed findings regarding its Replacement Housing provisions as a basis to deny either the Cottages or Mallory Project because these extensions have been deemed consistent with these requirements and the City has no reasonable basis to otherwise deny the extensions.

Under the HAA, the City bears the burden of making findings that a housing development project results in a specific, adverse impacts to public health or safety that cannot feasibly be mitigated to deny or condition the project at a lower density.<sup>8</sup> (Gov. Code, § 65589.5(j)(1).) The HAA clarifies that that “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions...” (Gov. Code, § 65589.5(j)(1)(A).) The HAA further applies to any votes for “any required land use approvals or entitlements necessary for the issuance of a building permit[,]” including denials of subdivisions maps and time extensions.<sup>9</sup> (Gov. Code, § 65589.5(h)(6); see HCD, Housing Accountability Act Technical Assistance Advisory, p. 19 (Sep. 15, 2020).)

**Cottages Project.** The Cottages DRP authorizes design improvements to condominiums, but it does not “convert” the housing units. That has already occurred. As stated in the Staff Report and proposed Resolution, the City Council approved the conversion to condominium with the final map on December 8, 2009, which was recorded on October 8, 2010.

Even if the City denies the DRP extension, Ojai Bungalows retains the right to move forward with the sale of each existing condominium, as-is, without approval by the City. Therefore, the City's Replacement Housing provisions cited in the September 27, 2022 staff report as basis to deny the DRP extension do not apply to the Cottages Project because the map has already been recorded, the

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<sup>8</sup> In enacting the HAA, the California Legislature specified that “a specific, adverse impact upon public health and safety [should] ... arise infrequently.” (Gov. Code, § 65589.5(a)(3).)

<sup>9</sup> See Section V.B or further discussion of the application of the HAA to the Cottages and Mallory Projects.

housing on that parcel was already converted to separate legal lots and each lot may be separately sold as a condominium in accordance with state law and the Municipal Code as of the time of map recordation. Section 10-2.904(e) specifies that “[e]very entitlement for a residential project that is subject to the provisions of this section shall contain a condition detailing the method of compliance” and “[e]very final and parcel map shall bear a note indicating whether compliance with the requirements of this section must be met prior to the issuance of a building permit.”<sup>10</sup> The Project and recorded map do not contain either of these requirements. As such, Section 10-2.904 does not apply.

As cited above, the City has already taken many actions that underscore this interpretation. (See City’s Planning Commission approvals of Project at no fewer than 7 public hearings in 2016 (February 17, March 2, March 16, June 1, June 15, and August 17) and once again in October 2017 and never applied the Replacement Housing provisions to the Project.)

Further, as stated in the September 27, 2022 Staff Report and proposed Resolution, the substantive basis for proposed denial of the extension is that, based on changes to the General Plan and Zoning Code, the City Council cannot approve the entitlement as it would be “injurious to the public convenience, health, safety, or general welfare” as it would “convert” affordable housing units. (Section 10-2.3203(a)(5).) Not so. The recording of the final map in 2010, before the City’s Replacement Housing provisions were adopted, converted these units into “condominiums,” not the extension of the DRP. The DRP simply seeks to reconstruct or rehabilitate these units to improve their safety by addressing fire life safety items, such as fire sprinkler installation, upgrades to plumbing and electrical (both inside and outside the units), storm drainage improvements, structural upgrades, and general update of the units to modern building code standards. As such, the City Council has no basis to find that the Ojai Bungalows DRP extension, which would improve the condition of existing units, injures the public convenience, health, safety, or general welfare. Therefore, the City cannot make the required findings to deny the Cottages DRP extension.

**Mallory Project.** Similarly, the HAA applies to any City Council action related to the Mallory Project approvals. Based on the record, the City has presented no evidence, let alone substantial evidence, that the Mallory Project or extension of the Project approvals would result in a specific, adverse impacts to public health or safety that cannot feasibly be mitigated. (Gov. Code, § 65589.5(j)(1).) Rather, the Planning Commission’s approval of the Mallory Project on February 15, 2012 and adoption of the Environmental Impact Report under the California Environmental Quality Act on June 26, 2012 serves as strong evidence that the Project does not constitute a significant adverse impact on public health or safety. Further, in its 2012 approval the City found that, “The design of the subdivision and improvements will not cause serious public health problems. No hazardous materials are expected to be present at the site, and the proposed continuing and expanded residential uses by their nature will

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<sup>10</sup> For the purpose of this letter, unlabeled sections refer to the Ojai Municipal Code.

not result in threats to public health.” Accordingly, the City Council lacks the evidence necessary to deny the extension to the Mallory Project approvals under the HAA.

As such, the City Council cannot meet its burden of proof to deny or condition the Cottages or Mallory Project approvals based on a specific, adverse impact to public health and safety pursuant to an applicable objective, written City standard.

**B. The City Cannot Enforce the Replacement Housing Regulations Against Ojai Bungalows to an Extension of DRP Permits Which are Only for Design Review**

The City Council improperly seeks to impose new use conditions on a Design Review Permit, which applies solely to physical or architectural attributes of a development project. (See Section 10-2.2001.) Other permits, such as planned development permits and conditional use permits—that are not relevant to the time extension request because of the final map—are required in addition to a Design Review Permit when applicable to a project. Section 10-2.2002 makes clear that the scope of a DRP relates only the “physical attributes of [the] project” not use, occupancy or other considerations. (See Section 10-2.2002 [“The basis for approving, conditionally approving or denying a design review permit is expressly limited to physical attributes of a project as opposed to use, occupancy or considerations other than compliance with the standards set forth in Sections 10-2.2004 and 10-2.2009.”].) Section 10-2.009 further specifies the design findings associated with the approval of a Design Review Permit, such as traffic, lighting and project size.<sup>11</sup> Therefore, the City Council cannot improperly expand the scope of review for the DRP to include aspects of the Project’s use; rather the City Council must make its findings solely on the basis of design.

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<sup>11</sup> The City may point to the general finding requirement in Section 10-2.2009(a) to argue that the City’s entire Code (including sections related to Replacement Housing) apply to this DRP extension. That is incorrect. Although Section 10-2.2009(a) includes a general reference to a requirement that the City make a finding that “[a]ll basic provisions of these Zoning Regulations are complied with” when issuing a design review permit, this language must be read in connection with the main definition of a Design Review Permit, which includes an express limitation that design review permit approvals are based only on “physical attributes of a project.” Thus, this more general reference to all Zoning Regulations does not swallow the specific limitation that a Design Revise Permit only relates to physical attributes of a project, not the use or occupancy of the project. (See *Home Depot, U.S.A., Inc. v. Contractors’ State License Bd.* (1996) 41 Cal.App.4th 1592, 1602 [“Every word of a statute must be given significance, when possible, to avoid a construction that renders a word superusage.”]; *Arbuckle-College City Fire Protection Dist. v. County of Colusa* (2003) 105 Cal.App.4th 1155, 1166 citing *People v. Weatherill* (1989) 215 Cal.App.3d 1569, 1577–1578 [“It is a general rule of statutory interpretation that, in the event of statutory conflict, a specific provision will control over a general provision.”].) Further, the reference to “these Zoning Regulations” indicates the provision’s intent that the findings include Section 10-2.2 rather than the entirety of the City’s Zoning Code. Further, such an interpretation would render the City’s other use permits superfluous. Furthermore, the extensions have been deemed consistent with the Replacement Housing provisions under the HAA for the reasons stated in Section V.A.2.

Therefore, it is improper for the City to now assert that these Replacement Housing provisions apply to the Cottages and Mallory Projects' DRP extension approval. Denying the DRP extension applications on those grounds would be arbitrary and capricious.

**C. Ojai Bungalows Has Vested Rights To Complete the Cottages Project Pursuant to the City Council's Prior Approvals**

The time extension for the Cottages DRP appears to be superfluous because the Project's entitlements were vested long ago. The Cottages Project received three discretionary entitlements in 2007: a Design Review Permit, a Tree Permit, and a Tentative Tract Map ("Project Entitlements" or "Project Permits"). This City Council is now considering an extension for one of those permits—the DRP. Because all the Project Permits were vested years ago, it appears that this application request is superfluous.

The doctrine of vested rights protects property owners from changes in zoning or other land use regulations which occur before the completion of the owner's development project. (*Russian Hill Improvement Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 39.) A vested right to complete the project arises after the property owner has performed substantial work, incurred substantial liability and shown good faith reliance upon a governmental permit. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791.) The California Supreme Court also has held that a city could not enforce subsequently enacted condominium regulations against developer that obtained final map approval and all necessary permits to complete condominium conversion. (*City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1191.)

The City issued the Project Entitlements in 2007. Ojai Bungalows and the prior owners of the Property have spent significant time and money in reliance on that original entitlement package, thus the permits are vested. After entitlement in November 2007, the prior owners spent significant time and money working to clear the conditions of approval for the tentative map associated with the Project. In fact, the final map was recorded October 8, 2010. Because the 2007 entitlements are a package, the significant money and time spent clearing the map conditions and getting to final map vested the entire entitlement package, not just the map. Furthermore, the City issued a building permit (12-54) for underground utilities related to the Project on April 4, 2012, and an inspection on work completed under that permit was done on March 28, 2013. This investment further vesting the Project Permits, including the DRP.

The City itself has acknowledged this vesting. In 2014 when Ojai Bungalows was considering purchasing the Property, Ojai Bungalows reached out the City and received an opinion from the City Planning Director that the Project was fully entitled. The City responded in writing saying that the entitlements had been exercised. (See Planning Director Memorandum dated March 4, 2014 [**The summary of events listed above demonstrates that the Planning Permits have been exercised.**].)

Additionally, in the City's staff report for their August 17, 2016 hearing, the City explains that in accordance with Ojai Municipal Code Section 10-2.3202(a)(1) that "**recording of this map is considered exercising the development permit.**" Section 10-2.3202(a) states that a permit is exercised if the owner "[o]btained a building permit and continuous on-site construction activity including pouring of foundations, installation of utilities, or other similar substantial improvements has commenced." This type of investment does not just "exercise" an entitlement, it vests that entitlement.

Additionally, in reliance on the existing Cottages Project Entitlements and the City's representations about said entitlements, for years Ojai Bungalows continued to work with the City to get additional building permits issued. Based on this work, the City represented that Ojai Bungalows could receive additional building permits in October 2018. In reliance on that representation, Ojai Bungalows paid \$9,737.60 in school fees on March 15, 2018. The City also was aware that Ojai Bungalows disconnected utilities and took other steps, including evicting tenants to implement the construction of Phase 1 of the Project.

All these actions, including the investments to get the map recorded, the recording of the map, work related to utilities and other site improvements, and eviction of tenants, support the conclusion that the Cottages Project Entitlements—including the DRP—are vested.

Since the Cottages Project Entitlements are vested based on Ojai Bungalow's performance of substantial work in good faith reliance on the Project Permits, it is improper for the City to suggest that an extension is needed, let alone to purport to deny the extension.

Furthermore, the denial of the vested DRP violates state law, and may effectuate a taking under state and federal law by denying the Ojai Bungalows right to complete the approved renovations to the existing units and construction of the two new units on legal lots. Imposition of new requirements on a vested approval also may constitute an exaction.

In summary, Ojai Bungalows has established a vested right in the DRP by conducting substantial work in good faith reliance on the City's actions. The City cannot simply 15 years after the original Project approval and six years after recordation of the final map seek to impose new Replacement Housing provisions that preclude the grant of a Design Review Permit to rehabilitate eight of the units on the Property and to develop two of the new condominium lots.

**D. The City could be subject to substantial legal costs to defend a lawsuit by Ojai Bungalows and may face significant additional costs due to its violation of the Housing Accountability Act.**

The City faces substantial legal risk and exposure especially if it is required to pay its own attorney's fees and potentially Ojai Bungalow's attorney's fees in accordance with state law, not to mention the inevitable expenditure of significant City resources defending its actions.

Land use litigation often is a costly endeavor. The City would be required to invest significant resources to compile the administrative record, which will extend back to at least 2005, to litigate the case. The Ojai City Attorney can opine on the expected costs associated with such litigation, however, such administrative costs and attorneys' fees for the City Attorney or other outside counsel time would likely be substantial.

If a court finds that Ojai violated the HAA for the reasons above, the court may issue an order compelling that the City take action to approve the Cottages DRP extension and/or the Mallory Project approvals within 60 days. (Gov. Code, § 65589.5(k)(1)(A)(ii).) Failure to comply would subject Ojai to fines and deem the Projects approved. (Gov. Code, § 65589.5(k)(1)(B), (C); see also Gov. Code, § 65589.5(l).) Importantly, the court also "shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances..." As such, Ojai could be required to pay both its attorney's fees as well as Ojai Bungalow's attorney's fees due to violations of the HAA. Accordingly, should Ojai Bungalows prevail on its HAA claims, the City's legal costs would at a minimum double and the City may be subject to additional fines if it elects not to comply with the court's orders.

**VI. Approving the Development Agreement Is Right for Ojai**

The Development Agreement presents an unprecedented opportunity for Ojai. This Development Agreement will provide deed-restricted affordable units for 55 years, phasing that will ensure the construction of all the affordable units before the remainder of the market units, and unprecedented tenant protections. Without the Development Agreement, the City will have no deed-restricted units, none of the extra tenant protections, and the City will likely face significant costs and additional risks associated with its own attorney's fees and potentially the developers' attorney's fees. Change can be scary, but this change is right for Ojai because it protects some of Ojai's most vulnerable citizens, while improving the City's housing stock and helping to build a solid foundation for the City's future.

Mayor Stix and Council

October 18, 2022

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We respectfully request that this Council make the right decision for the City of Ojai and its residents and approve the Development Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth Collins".

Beth A. Collins

Cc: Matthew Summers, City Attorney

24774234.8  
DRAFT 10/13/22 12:02PM

October 18, 2022

Beth A. Collins  
Attorney at Law

**VIA EMAIL**

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Mayor Stix and Councilmembers  
Ojai City Hall  
401 S. Ventura Street  
Ojai, CA 93023

**RE: Response Regarding Various Environmental Comments  
Becker Development Agreement October 18, 2022 Council Hearing**

Dear Mayor Stix and Councilmembers,

As you know, we represent Ojai Bungalows LP and Greenhawk LLC (collectively, “Ojai Bungalows”), the owners of the properties at 312 W. Aliso Street (“Cottages Project”), 304 S. Montgomery (“Montgomery Project”), 412 Mallory Way (“Mallory Project”), and 107 N. Ventura Street (“World University Project”) in the Development Agreement being considered on October 18, 2022 (“Development Agreement” or “Project”).

The purpose of this letter is to respond to a number of concerns raised in public comment letters with regard to the environmental analyses associated with the project described in the Development Agreement. Specifically, this letter explains why the City has fully complied with the California Environmental Quality Act (“CEQA”) with respect to this Project. The City has correctly concluded that a series of CEQA exemptions apply to the Project. Additionally, the City has correctly concluded that there are no new significant impacts and no changes in circumstance that trigger the need to amend prior environmental analyses of the Cottages or Mallory projects. The City’s CEQA analysis and application is appropriate for all sites and for the Project as a whole.

A few issue areas in particular (water, trees, historic, and traffic) have received specific comment and interest. This letter details each of those areas and provides evidence to support the City’s CEQA conclusions.

**I. Due to the Water Efficiency Required By the Modern Building Code, the Project Likely Reduces Water Demand Associated with the Four Properties; And Even If It Did Not, Casitas Municipal Water District Has Plenty of Water To Serve the Project**

Project opponents claim that there is insufficient water to support the Project. The reality is that the 33 antiquated units at Cottages and Mallory use more water than the 67 proposed new and refurbished water and energy-efficient residential units. Furthermore, the City's own water purveyor has concluded that adequate water exists to serve the Project.

**A. The Development Agreement Will Not Result in Increased Water Demand Because the New Units Will Be Much More Water Efficient than the Old Units they Replace**

The 67 new proposed residential units will replace 33 existing antiquated residential units and existing office space. These new and refurbished units will use less water than the existing facilities due to massive improvements in water efficiency in modern building codes.

The eight existing cottages were built in 1929 and the 25 existing units at Mallory were built between 1947 and 1949. At that time, there was no federal plumbing code or California residential water efficiency standards. In contrast, the 67 new or retrofitted units will use state-of-the-art fixtures. Therefore, the Development Agreement will result in no additional water demand.

Before 1980, a shower flow was typically 3.5 gallon per minute (gpm) and a toilet used 5.0 gallons per flush.<sup>1</sup> New CALGreen<sup>2</sup> regulations prescribe standards for all plumbing fixtures and fittings installed in residential buildings.<sup>3</sup> Pursuant to CALGreen, new showers may not use more than 1.8 gpm and new toilets may not exceed 1.28 gallons per flush.<sup>4</sup> There are also flow rate limits for kitchen and bathroom faucets.<sup>5</sup> Today, ENERGY STAR certified washing machines use an average of 14 gallons of water per load. Before 1980, an average top loading washing machine used between 40 and 45 gallons per wash.<sup>6</sup>

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<sup>1</sup> Codes and Standards Research Report, California's Indoor Water Use Report, May 2015; Water Use in the California Residential Home, January 2010, California Homebuilding Foundation by Stockton-based ConSol, p. 6. [https://cbia.org/wp-content/uploads/2022/01/2010-chf\\_water\\_use\\_in\\_the\\_California\\_Residential\\_Home-.pdf](https://cbia.org/wp-content/uploads/2022/01/2010-chf_water_use_in_the_California_Residential_Home-.pdf)

<sup>2</sup> CALGreen, California's green building code, is formally known as the California Green Building Standards Code, Title 24, Part 11, of the California Code of Regulations and was first adopted in 2009. CALGreen is updated by the California Energy Commission (CEC) every three years and the mandatory measures are required on all new homes and residences.

<sup>3</sup> See CCR, Title 24, Part 11, Section 4.301.

<sup>4</sup> CCR, Title 24, Part 11, Section 4.301.

<sup>5</sup> See CCR, Title 24, Part 11, Section 4.303.1.4.

A 2010 study showed that in 1975, a three bedroom home was estimated to use over 90,000 gallons per year for indoor water use.<sup>7</sup> A 2018 three bedroom single-family homes with four occupants uses an estimated 46,500 gallons of water per year in inside use – a 50% reduction from homes built in 1980.<sup>8</sup> Because the existing units were built before 1980 (some well before that time), they likely use more than double the amount of water in a new home. Thus, if the 33 existing units are using 100,000 gallons of water per year for indoor uses (3.3 million gallons per year), the 67 new units will use an estimated 45,000 gallons of water per year for indoor uses (3.015 million gallons per year), and the onsite indoor water use will decrease as a result of the project.<sup>9</sup> Note: this calculation does not take into account the historical water demand at World University (which is an existing building) and therefore the savings will likely be greater.

New and retrofitted residential developments must also comply with a local water efficient landscape ordinance or the current California Department of Water Resources' Model Water Efficient Landscape Ordinance (MWELO), whichever is more stringent.<sup>10</sup> All local agencies must adopt, implement, and enforce the MWELO or a local Water Efficient Landscape Ordinance (WELO) that is at least as effective as the MWELO. In 2014, the City of Ojai adopted MWELO.<sup>11</sup>

In sum, the 33 existing residential units that were built without complying with any water efficiency standards will be replaced or retrofitted. The 67 new and upgraded units must be constructed with new water-efficient showers, bathroom, and kitchen faucets, washing machines, and toilets, along with leak-proof fittings, resulting in a net decrease in total water use. Any new landscaping will comply with MWELO and use drip irrigation. Thus, since the new and refurbished residential units in the Ojai Bungalows Project must comply with current building codes which require the installation of fixtures with significant water savings features, the Project will actually likely reduce water usage in the City of Ojai.

**B. Water Is Available for the Development in Ojai, Especially Affordable Housing Development**

The Casitas Municipal Water District (CMWD) is the water provider for the City of Ojai and makes water allocation decisions through their board. Under the California Water Code, CMWD is required to prepare an urban water management plan (UWMP) every five years to support its long-term resource planning to ensure that adequate water resources are available to meet existing and future

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<sup>7</sup> Codes and Standards Research Report, California's Indoor Water Use Report, May 2015; Water Use in the California Residential Home, January 2010, California Homebuilding Foundation by Stockton-based ConSol, p. 3. [https://cbia.org/wp-content/uploads/2022/01/2015-codes\\_and\\_standards\\_residential\\_indoor\\_water\\_use\\_may\\_15\\_v2.pdf](https://cbia.org/wp-content/uploads/2022/01/2015-codes_and_standards_residential_indoor_water_use_may_15_v2.pdf)

<sup>8</sup> Codes and Standards Research Report, California's Indoor Water Use Report, May 2015; California Housing Facts, CBIA, Building Water Efficiency into Every Home in California, available at: [2018-building-water\\_efficiency.pdf \(cbia.org\)](https://cbia.org/2018-building-water_efficiency.pdf).

<sup>9</sup> The focus here is on indoor water use as outdoor water use will largely remain the same.

<sup>10</sup> *Id.*, Section 4.304.1.

<sup>11</sup> City of Ojai, Ordinance 841.

water needs.<sup>12</sup> UWMPs are specifically required to include projected water use for housing needed for lower income households, as identified in the City's Housing Element, in order for CMWD to prioritize providing service to these affordable units.<sup>13</sup>

The EIR for the City's last housing element (2006-2014) dated September 2012 analyzed the construction of 201 new housing units. As reported in the 2021-2029 housing element, they've achieved 88 of 371. Therefore, CMWD was aware of the City's proposal to construct up to 371 new residential units when it drafted its 2020 UWMP. In fact, in its 2020 UWMP, CMWD anticipates that there will be limited additional demand added to the Ojai Water System over the 2025-2040 planning period due to limited growth and because drought conditions typically result in permanent changes to water demand.<sup>14</sup> In total, the Ojai Water System annual demand is estimated to be 1,850 acre-feet (AF), with 1,089 AF assigned to single family residences and 95 assigned to multi-family residences.<sup>15</sup> In comparison, the 2020 UWMP projects that it will have annually 2,761 AF reasonably available to the Ojai Water System over the 2025-2040 planning period.<sup>16</sup> Thus, the 2020 UWMP projects that CMWD will reasonably have an annual buffer of 911 AF available to supply water to the City over the next 15 years.<sup>17</sup>

Based on fiscal year 2013-2014 data, CMWD served 2,700 residential service connections with a water demand of 1,738 AF.<sup>18</sup> These estimates mean that each residential service connection used approximately 0.64 AF in fiscal year 2013-2014. Conservatively assuming that residential demand remains constant, CMWD's annual buffer supply of 911 AF would permit the construction of 1,423 new residential units.<sup>19</sup> Further, under CMWD's Stage 1 water allocation, multi-family residential customers receive an annual allocation for essential health and sanitation of 84 hundred cubic (HCF), which equals approximately 0.19 AF.<sup>20</sup> Based on this Stage 1 water allocation, the annual buffer supply could support the essential water demands of approximately 4,795 residential units. Given that the Development Agreement proposes 67 new and upgraded units with efficient appliances and

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<sup>12</sup> Wat. Code, §§ 10608, 10610-10656.

<sup>13</sup> Wat. Code, § 10631.1; Gov. Code, § 65589.7.

<sup>14</sup> CMWD, 2020 UWMP, § 4.2.3 & 4.3, Tab. 4-3 (Jun. 23, 2021) available at <https://www.casitaswater.org/home/showpublisheddocument/4108/637607539377570000>; see CMWD, 2021 Lake Casitas Water Supply and Demand Study, p. 2 (Mar. 23, 2022) available at <https://www.casitaswater.org/home/showpublisheddocument/4415/637846683077070000>.

<sup>15</sup> CMWD, 2020 UWMP, Tab. 4-3 (Jun. 23, 2021).

<sup>16</sup> CMWD, 2020 UWMP, Tab. 6-9 (Jun. 23, 2021).

<sup>17</sup> CMWD, 2020 UWMP, Tab. 7-2 (Jun. 23, 2021). Even in the more conservative estimates presented in the 2020 UWMP based on five year drought conditions, CMWD continues to project that supply would exceed demand by 319 AF in the worst year. (CMWD, 2020 UWMP, Tab. 7-4 (Jun. 23, 2021).)

<sup>18</sup> CMWD, Water Efficiency and Allocation Program, p. 4 (May 12, 2021) available at

<https://www.casitaswater.org/home/showpublisheddocument/4233/637690462660430000>.

<sup>19</sup> This estimate is conservative given that the water demand has reduced overtime in response to drought conditions and the residential service connections account for parcels with various home sizes and irrigated acreage.

<sup>20</sup> CMWD, Water Efficiency and Allocation Program, p. 4 (May 12, 2021).

limited exterior landscaping, CMWD has ample water available in its annual supply buffer to support the proposed residential units.

As such, CMWD's 2020 UWMP clearly demonstrates that there are sufficient water supplies to support the residential units proposed in the Development Agreement because any water demand associated with the 34 additional residential units should have been accounted for in its demand estimates and, even if they were not, CMWD expects to have additional supply available to support these units over the long-term planning period.

## **II. The Project Does Not Result In Any Significant Impacts to Trees**

Project opponents point to tree impacts or the idea that tree impact information is too old to be relevant and should be redone. In reality, the potential impacts to trees by the Project have already been considered and are addressed in the Development Agreement currently before you.

The original Cottages project approval in 2007/2008 was based on an arborist report created in December 2005, with updates on June 3rd and June 13th 2006. In creating the tree protection plan – as required in the original project conditions of approval – the applicant's arborist updated the tree inventory and plans again between 2016 and 2018. The applicant again had an arborist review the Cottages and Mallory properties in October 2022.

Numerous tree protection and mitigation measures were incorporated into the original Cottages approval and via Tree Permit T07-22. These include BIO-2: Oak Protection and Condition 11 which requires, amongst other things, monitoring tree health for 10 years to account for trees that may substantially decline because of the project, and a landscape maintenance plan that protects oaks. Furthermore, as proposed, the Cottages project would plant 19 new oak trees varying in size from 36 inch to 48 inch box trees.

As shown on the approved Mallory Way project plans, some trees will be impacted or removed. These impacts are mitigated to a less than significant impact by implementation of numerous mitigation measures of the EIR including a BIO-5(a) through BIO-5(c) which provide for tree replacement at a minimum 4:1 ratio, restriction on landscaping and irrigation within the driplines of oaks, and numerous tree protection measures such as pre-construction education of all construction workers, installation of protective fencing, avoidance of construction impacts, work monitored by an arborist, and others.

For the Montgomery site, trees were inventoried by South Environmental, and for purposes of analysis, assumed 10 oak trees would be removed. However when we overlay the project plans to the tree survey, we can see that several of the trees would likely be retained through site design. Nonetheless, the tree removals are proposed to be replaced at a 2:1 ratio.

At the World University site, no trees are proposed to be removed or expected to be impacted.

In his conclusion of the arborist report dated October 2022, the arborist concluded as follows:

**"The proposed landscape plan will mitigate for any impact or removal of existing trees on these properties.** The sites will benefit from the proposed landscape design and the required maintenance with the use of introducing native plant understory and a water-efficient irrigation system. Rain capture through the use of infiltration swales and permeable paving will help to replenish the groundwater aquifers and improve the health of the site's environment. The proposed designs for these properties will enhance the charming character of the cottages as well as make them more sustainable, viable, and safe. If the proposed projects were not to move forward, many of the existing trees will continue to deteriorate and ultimately fail in the near future. **The projects as proposed will have minimal impact to the existing trees and ultimately will add to the biodiversity of the site and enhance the urban landscape. This project will also reduce the fire risks associated with the site as it currently exists."**

### **III. The Project will Not Significantly Impact Historic Resources**

Project opponents have asserted that the Project should be denied based on impacts to historic resources. It is important to note there are no new significant impacts, nor significant change to circumstance that would necessitate additional environmental review pursuant to CEQA beyond what has already been performed in support of the certified MND for Cottages and EIR for Mallory Way.

The Cottages, built in 1929 have been identified as having historic value, are historic resources for the purposes of CEQA, and meet the criteria for local, state, and federal designation as historic landmarks (Ojai 2007). Thus, the applicant intends to keep the exterior largely unchanged. Per the City's 2016 staff report, "the reconstruction will maintain the architectural characteristics of the original units and stabilize the original construction. Thus, the Project enhance the structures, it in no way degrades their historical character. This is why the City found in its MND that impacts of historic resources with the refurbishment of the Cottages are mitigated to a less than significant level via implementation of measure CR-1.

The two units recently added to the project (1 very low, 1 low-income) are proposed to be built above a proposed garage. In the City's June 2016 Administrative Report, the City relays that the reevaluation of the historic resource potential by San Buenaventura Research Associates, found the "two existing garage/carport structures to be beyond salvaging for reuse," and further, quoting that evaluation, that they were "minor contributors to the significance and eligibility" due to the fact the carports had been built later. Additionally, the two new units are proposed on top of an entirely rebuilt structure (Garage 1) and the Project proposes to "reconstruct the buildings to appear as near to their original design as possible." Thus, the new garage and second story units will be designed to match the existing Cottages.

The Mallory Way property was historically used as a Motor Lodge, which has since been converted to long term residential use. The Certified EIR for Mallory concluded that impacts to historic resources would be reduced to a less than significant level via implementation of mitigation measures including photo-documentation, interpretation, preservation, onsite commemoration, and offsite reuse of structures if feasible. Alternatives to the project were considered and found to be infeasible.

In sum, the Ojai Bungalows Project will not result in any new significant impacts associated with historic resources.

#### **IV. The Project Will Not Cause Any Significant Traffic Impacts**

The City has received a variety of traffic comments, some of which appear to be based on misinformation. For example, at least one comment letter stated 30 new units were proposed at Mallory Way; in fact the project will only add five new units at Mallory and four new units at Cottages (of which two are previously entitled and not yet built).

The 2007 approval of the Cottages found less than significant impacts to traffic, as did the subsequent extensions granted by the City. In its approval of Mallory Way project, the City came to similar conclusions. In addition to having no significant impacts, the projects will improve circulation.

##### **A. Mallory Way Approvals Found No Significant Traffic Impacts**

The Findings for the 2012 approval on Mallory Way state “the project has been designed to avoid traffic and circulation congestion.” The approval went on to say: “a professional traffic engineer has prepared a Phase I traffic analysis that indicates that the proposed project would not create project specific or cumulative impacts to area roadway segments.” The Mallory Way project is also required to pay traffic impact fees and make certain improvements to the frontages of Mallory Way and West Summer Streets including 1) pedestrian paths along Eucalyptus, W Summer and Mallory Way, 2) to provide for a safe transitions, 3) access point improvements at West Eucalyptus and Mallory Way, noting that the entrance of West Summer is not conducive to this type of entrance design, 4) required fire department access improvements, and 5) construction of a multi-use trail. In terms of construction traffic, the project is subject to a Haul Route permit therefore construction deliveries will be controlled.

##### **B. Cottages Approvals Found No Significant Traffic Impacts**

Finding number 8 of the City Council’s November 2007 approval states, “the project has been designed and conditioned to avoid traffic and circulation congestion. A professional traffic engineer has prepared a Phase 1 traffic analysis that indicates that the proposed project would not create an project specific or cumulative impacts to area roadway segments or intersections.”

In addition to providing a public pedestrian walkway/path across the site, the applicant is required to pay traffic impact fees and to replace curb, gutter and sidewalk along Aliso street along the frontage of the property – while retaining and incorporating existing landscape features such as low stone walls if possible.

**C. The Project Will Not Cause Significant or Cumulative Traffic Impacts**

The proposed new residential units on each of the four sites are appropriately “screened out” from triggering any additional analysis for traffic impacts under the VMT standard because they individually (and together) generate less than 110 Average Daily Trips (ADT).

Project opponents have claimed that the City failed to consider cumulative impacts associated with traffic from each of the four sites because it did not add the VMT associated with each of the sites together to determine whether there was a cumulatively significant impact. However, VMT is endemically a cumulative analysis. Per the Office of Planning & Research’s Technical Advisory regarding VMT, “a finding of a less-than-significant project impact would imply a less than significant cumulative impact, and vice versa”.

Additionally, a revised traffic analysis demonstrates that the City’s traffic analysis is conservative. Specifically, the attached traffic report demonstrates that the City’s VMT analysis, included in its staff report, conservatively estimates the VMT associated with each project site. An updated analysis of VMT associated with each of the sites (and all the sites) results in a VMT less than 110 ADT, thus the Project is appropriately screened out for potential traffic impacts at a project and cumulative level. (See attached Traffic Report prepared by Dennis Lammers, PTP, Stantec.)

**VII. Approving the Development Agreement Is Right for Ojai**

The Development Agreement presents an unprecedented opportunity for Ojai. This Development Agreement will provide deed-restricted affordable units for 55 years, phasing that will ensure the construction of all the affordable units before the remainder of the market units, and unprecedented tenant protections.

Without the Development Agreement, the City will have no deed-restricted units, none of the extra tenant protections, and the City will likely face significant costs and additional risks associated with its own attorney’s fees and potentially the developers’ attorney’s fees. Change can be scary, but this change is right for Ojai because it protects some of Ojai’s most vulnerable citizens, while improving the City’s housing stock and helping to build a solid foundation for the City’s future.

Mayor Stix and Council

October 18, 2022

Page 9

We respectfully request that this Council make the right decision for the City of Ojai and its residents and approve the Development Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth Collins".

Beth A. Collins

Cc: Matthew Summers, City Attorney

Enclosures: Arborist Report, Bill Mellett, Landscape Architect/Certified Arborist  
Traffic Report, Dennis Lammers, PTP, Stantec

BILL MELLETT DESIGN

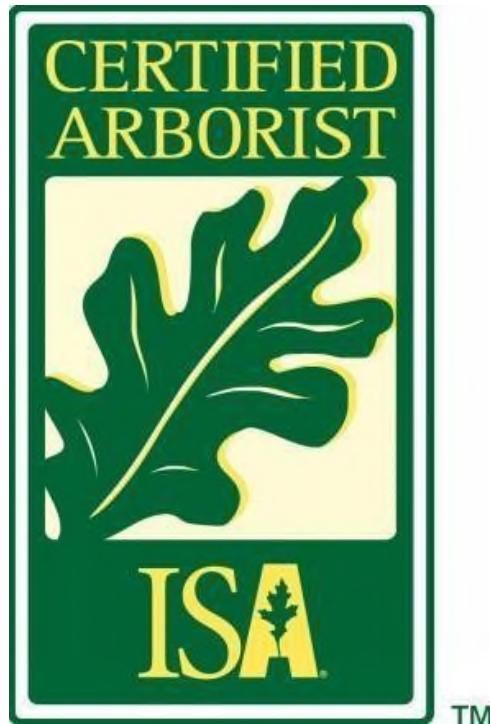
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# Arborist Report

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312 W. Aliso Street, Ojai CA 93023  
&  
412 Mallory Way, Ojai CA93023

CERT.# WE 7619A



Prepared By: Bill Mellett

October 18, 2022

Re: Tree Report for  
312 W. Aliso Street  
and  
412 Mallory Way  
Ojai, CA 93023

To Whom It May Concern:

At the request of Jeff Becker, owner of 312 W. Aliso Street and 412 Mallory Way, Ojai CA 93023, I visited the site on October 13, 2022, and made the following observations and recommendations regarding existing site conditions.

A standard visual assessment of the trees was performed. Notes on the condition of the trees were taken and recorded. No invasive examinations or excavations were performed. A tree protection plan was completed on January 17, 2018 for the proposed project at 312 W. Aliso Street and submitted to the City for approval.

Method Of Original Study

- All trees were tagged.
- Live tree trunk and canopy diameters were recorded.
- All trees were assessed for health and structure.

Numerous existing trees on site are in decline and in poor condition. After a review of the site's conditions today, several trees from the previous tree assessment, have either been removed due to hazardous conditions or fallen into further decline. Some of the trees identified to be removed due to the project's impact are due to existing hazardous tree conditions, declining tree health, as well as fire truck clearance access throughout the site. The proposed landscape plan will mitigate for any impact or removal of existing trees on these properties. The sites will benefit from the proposed landscape design and the required maintenance with the use of introducing native plant understory and a water-efficient irrigation system. Rain capture through the use of infiltration swales and permeable paving will help to replenish the groundwater aquifers and improve the health of the site's environment. The proposed designs for these properties will enhance the charming character of the cottages as well as make them more sustainable, viable, and safe. If the proposed projects were not to move forward, many of the existing trees will continue to deteriorate and ultimately fail in the near future. The projects as proposed will have minimal impact to the existing trees and ultimately will add to the biodiversity of the site and enhance the urban landscape. This project will also reduce the fire risks associated with the site as it currently exists.

The proposed projects will add habitat to the existing site with the use of native and drought-tolerant plant material, which will enhance the biodiversity of the current site. This project as proposed will also remove non-native invasive species which are existing on site.

**Bill Mellett Design**  
Landscape Architect  
Consulting Arborist  
LA Lic. #4464 ISA Cert. #WE-7619A

I certify that all the statements of fact in this report are true, complete, and correct to the best of my knowledge and belief and that they are made in good faith.

If you have any questions or need clarification on any item, please do not hesitate to contact me.

Sincerely,

*Bill Mellett*  
I.S.A. Certified Arborist # WE-7619A

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To: Jeffrey R. Becker  
Ojai Bungalows LP

From: Dennis Lammers, PTP  
Stantec

File: 2042

Date: October 18, 2022

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**Reference: Ojai Residential Developments – VMT Analysis**

Stantec has prepared a vehicle miles of travel (VMT) analysis for four proposed multi-family residential developments located at 312 W. Alico Street, 107 N. Ventura Street, 412 Mallory Way and 304 S. Montgomery Street in the City of Ojai. Each proposed residential development is a standalone site and is therefore analyzed separately. The purpose of this memo is to document the findings of the VMT analysis prepared in support of the proposed developments' environmental documentation and complies with the updated California Environmental Quality Act (CEQA) guidelines that incorporate the requirements of Senate Bill 743 (SB 743).

**Development Statistics and Trip Generation Estimates**

The following paragraphs outline the statistics and trips generation estimates for each of the four proposed developments. Trip generation estimates for each of the proposed developments were calculated using rates contained in Institute of Transportation Engineers (ITE) *Trip Generation Manual*<sup>1</sup>.

Cottages Among the Flowers (312 W. Alico Street). This development consists of renovation of eight existing residential units and addition of four new units, of which two units are designated affordable deed restricted units. Based on the residential unit types, ITE Land Uses *Multi-Family Housing* (#220) and *Affordable Housing* (#223) were applied to determine trip generation estimates. As shown in Table 1, the development is expected to generate 24 average daily trips (ADT) with two trips occurring during the AM and PM peak hours.

**Table 1 – 312 W. Alico Street Trip Generation**

Land Use	ITE Land Use	Size	Average Daily Trips		AM Peak Hour Trips		PM Peak Hour Trips	
			Rate	Trips	Rate	Trips	Rate	Trips
Multi-Family Housing	220	2 Units	6.74	14	0.4	1	0.51	1
Affordable Housing	223	2 Units	4.81	10	0.36	1	0.46	1
<b>Total</b>				<b>24</b>		<b>2</b>		<b>2</b>

World University (107 North Ventura Street). The proposed development consists of the conversion of 8,129 square feet (GFA) vacant office space into 10 residential units, of which three units are designated affordable deed restricted units. ITE Land Uses *Multi-Family Housing* (#220) and *Affordable Housing* (#223) were applied to determine trip generation estimates. As shown in Table 2, the development is expected to generate 61 average daily trips (ADT) with four trips occurring during the AM peak hour and six trips occurring during the PM peak hour. It is noted that these trip estimates are considered conservative because no trip credits are applied for the existing office space.

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<sup>1</sup> Trip Generation, Institute of Transportation Engineers, 11<sup>th</sup> Edition, 2021.

**Table 2 – 107 North Ventura Street Trip Generation**

Land Use	ITE Land Use	Size	Average Daily Trips		AM Peak Hour Trips		PM Peak Hour Trips	
			Rate	Trips	Rate	Trips	Rate	Trips
Multi-Family Housing	220	7 Units	6.74	47	0.4	3	0.51	4
Affordable Housing	223	3 Units	4.81	14	0.36	1	0.46	2
<b>Total</b>				<b>61</b>		<b>4</b>		<b>6</b>

Mallory Way Bungalows (412 Mallory Way). The site currently has 25 residential units. The proposed development consists of demolishing 18 existing units, renovation of the remaining seven units and construction of 23 new residential units. The total number of residential units after completion would be 30 units, of which seven units are designated affordable deed restricted units. ITE Land Uses *Multi-Family Housing* (#220) and *Affordable Housing* (#223) were applied to determine trip generation estimates. As shown in Table 3, the development is expected to generate 20 net-new average daily trips (ADT) with two trips occurring during the AM and PM peak hours.

**Table 3 – 412 Mallory Way Trip Generation**

Land Use	ITE Land Use	Size	Average Daily Trips		AM Peak Hour Trips		PM Peak Hour Trips	
			Rate	Trips	Rate	Trips	Rate	Trips
Existing Multi-Family Housing	220	25 Units	6.74	-169	0.4	-10	0.51	-13
Proposed Multi-Family Housing	220	23 Units	6.74	155	0.4	9	0.51	12
Proposed Affordable Housing	223	7 Units	4.81	34	0.36	3	0.46	3
<b>Net Total</b>				<b>20</b>		<b>2</b>		<b>2</b>

Montgomery Affordable Housing (304 S. Montgomery Street). The proposed development consists of the construction of 15 residential units on the currently vacant site. All 15 units are designated affordable deed restricted units. Given that the development is designated 100 percent affordable, it satisfies the *Affordable residential development* screening criteria and is except from further VMT analysis, as discussed in the VMT Project Screening section below.

### VMT Analysis Methodology

The Governor's Office of Planning and Research (OPR) Technical Advisory<sup>2</sup> recommends local agencies adopt guidelines appropriate for their jurisdiction. The City of Ojai follows the County of Ventura guidelines. The County of Ventura has developed the Initial Study Assessment Guidelines<sup>3</sup> (referred to here as County Guidelines) that are consistent with the CEQA requirements and includes analysis methodology and significance thresholds for projects in County areas. Since the County Guidelines do not include screening criteria, guidance from OPR's Technical Advisory and other local agencies are utilized here for the screening process.

<sup>2</sup> Technical Advisory on Evaluating Transportation Impacts in CEQA, Governor's Office of Planning and Research, State of California, December 2018.

<sup>3</sup> Ventura County Initial Study Assessment Guidelines, <https://s29422.pcdn.co/wp-content/uploads/2020/06/VMT-Draft-for-Public-Review-Clean-Version.pdf>

## VMT Project Screening

OPR's Technical Advisory advises that lead agencies conduct a screening process "to quickly identify when a project should be expected to cause a less than significant impact."<sup>4</sup> As shown in Table 4, the screening process considers the project size, low VMT areas, transit availability, affordable housing, and local serving development. If the Project meets one of the criteria, it is presumed to have a less than significant impact.

**Table 4 - Project Screening Criteria**

Category	Criteria/Screening	Threshold
Small Project	Small projects are presumed to have a less than significant impact	If the Project generates less than 110 net trips per day
Map-based screening	Projects that located in areas with low VMT are presumed to have a less than significant impact	If the Project is in a low VMT area, defined as 15% below the regional average.
Proximity to transit	Projects in a transit priority area are presumed to have a less than significant impact	If the Project is within ½ mile of a major or high-quality transit stop/corridor
Affordable residential development	Affordable housing in infill locations are presumed to have a less than significant impact	If the Project is comprised 100% of affordable units
Locally serving retail and other local serving uses	Retail projects that are local serving are presumed to have a less than significant impact  Other local serving uses approved by the local agency.	Retail that is less than 50,000 square feet  Uses approved by local agencies such as a public school.

As discussed previously, the proposed Montgomery Affordable Housing development satisfies the *Affordable Residential Development* criteria as it consists of 100 percent affordable housing and is exempt from further VMT analysis. Each of the remaining three separate residential developments satisfy the *Small Project* criteria and meets the intent and goals of SB 743. As shown in Tables 1 through 3, each project generates less than 110 net trips per day. Therefore, the *Small Projects* screening criteria applies and each of these three developments are exempt from further VMT analysis.

## VMT Cumulative Impact Analysis

Per the OPR Technical Advisory, "a finding of a less-than-significant project impact would imply a less than significant cumulative impact, and vice versa". Therefore, since each development has a less than significant impact at the project level, the Project has less than significant cumulative impact.

## Conclusion

A VMT analysis was conducted for four proposed multi-family residential developments located at 312 W. Aliso Street, 107 N. Ventura Street, 412 Mallory Way and 304 S. Montgomery Street in the City of Ojai. The analysis found that the Montgomery Affordable Housing development satisfies the *Affordable Residential Development* criteria as it consists of 100 percent affordable housing and is therefore exempt from further VMT analysis. Each of the remaining three separate residential developments satisfy the *Small Project* criteria by generating less than 110 net trips per day and are therefore exempt from further VMT analysis. Given that each residential development would have a less than significant impact at the project level, each residential development would have a less than significant impact at the cumulative level per OPR's Technical Advisory.

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<sup>4</sup> Page 12 ibid.

# Public Comment Fw: City council meeting 1/10/23 item 6

## Weston Montgomery

Tue 1/10/2023 9:39 AM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

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**From:** Bill <[REDACTED]>

**Sent:** Tuesday, January 10, 2023 6:09 AM

**To:** Weston Montgomery

**Cc:** James Vega; Lucas Seibert; Robin Godfrey; Marianne; Judy Murphy; Jeffrey Starkweather; Dale Hanson; Karin Quimby; Jamie Roth; Leonard Klaif; Nick Oatway; Robert Ornstein; William Weirick; Haney Landscape

**Subject:** City council meeting 1/10/23 item 6

1/10/23

To: City Council

Cc. City manager, planning director, assist to city manager, others

From. Bill Miley

Subject. Support for item 6, goals setting public workshops.

Hello. I am familiar with Jim Selman's past work with our city and several of his recent published books. He would be a good facilitator for our new council and any public persons attending the open sessions. Which i would plan on attending. I support your council in a decision to hold such.

Bill Miley. 😊😊

Sent from my iPad

# Public Comment Fwd: New submission from E-Mail all City Council Members & Mayor

## Weston Montgomery

Tue 1/10/2023 12:22 PM

To: Brian Popovich <Brian.Popovich@ojai.ca.gov>;

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**From:** weston.montgomery@ojai.ca.gov <weston.montgomery@ojai.ca.gov>

**Sent:** Tuesday, January 10, 2023 12:22 PM

**To:** Kristy Rivera <kristy.rivera@ojai.ca.gov>

**Subject:** Re: New submission from E-Mail all City Council Members & Mayor

Thanks Kristy

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**From:** Kristy Rivera <kristy.rivera@ojai.ca.gov>

**Sent:** Tuesday, January 10, 2023 12:11:17 PM

**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>

**Subject:** FW: New submission from E-Mail all City Council Members & Mayor

Hi Weston,

This just came in.

Kristy Rivera  
Administrative Assistant



City Manager's Office  
City of Ojai [401 S. Ventura St, Ojai, CA 93023](mailto:401.S.Ventura.St.Ojai.CA.93023)  
(805) 646-5581 ext. 100  
[kristy.rivera@ojai.ca.gov](mailto:kristy.rivera@ojai.ca.gov)

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**From:** RuthCooper [mailto: REDACTED ]

**Sent:** Tuesday, January 10, 2023 12:05 PM

**To:** Kristy Rivera <kristy.rivera@ojai.ca.gov>

**Subject:** New submission from E-Mail all City Council Members & Mayor

### Name

Ruth Cooper

### Email

REDACTED

### Subject

Reach codes

### Message

I am writing to express my agreement with the recommendations of the ad hoc committee regarding the city reach codes. Those recommendations are:

Remove all exemptions from the ordinance except for free standing Accessory Dwelling Units (ADU) and affordable housing exemption.

- Require all other buildings to be built "electric-ready" unless the property owner attests that it cannot be accomplished due to hardship.
- The attestation process will provide information regarding the benefits of electrification, and will require a signed acknowledgement.
- The Councilmembers also recommended adding criteria to the hardship exemption that would specifically address costs and construction ability.
- Finally, to make the language better match, remove language regarding outdoor fireplaces and cooking facilities from the covered project definition as there are not any alternative energy readily available.

# Public Comment FW: New submission from E-Mail all City Council Members & Mayor

Weston Montgomery

Tue 1/10/2023 12:57 PM

To: Brian Popovich <Brian.Popovich@ojai.ca.gov>;

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**From:** JustinPennington [REDACTED]

**Sent:** Tuesday, January 10, 2023 12:31 PM

**To:** Kristy Rivera <[kristy.rivera@ojai.ca.gov](mailto:kristy.rivera@ojai.ca.gov)>

**Subject:** New submission from E-Mail all City Council Members & Mayor

## Name

Justin Pennington

## Email

[REDACTED]

## Subject

Support for Clean Energy Ordinance Agenda Item #7

## Message

As a part of the ad-hoc committee that met with Councilmember's Blatz and Haney along with Dr. Steve Colome I wish to note that we did not agree with the recommendations as they pertain to the reach code. Requiring homes to be electric-ready is not a reach code and it is required now in California's new 2022 minimum building energy code requirement. This would be a step backwards in the reach code development not an improvement.

I propose that the council reconsider modifying the "reach code" ordinance and adopt a formal "Clean Energy Ordinance" which would ban gas appliances in new construction with no exemptions except if hardship can be proven through an appeals process. New electric/induction stoves, electric clothes dryers, electric/heat pump water heaters, and heat pump HVAC systems would be installed in homes instead of gas appliances. In Ojai, gas appliances in homes account for approximately half of our total greenhouse gas emissions. We are in a climate crisis and this is one of the best ways to reduce greenhouse gas emissions and provide a pathway for decarbonization. Once we stop adding new gas appliances in our homes and ADUs, we can then focus on providing ways to help our community transition responsibly when it's time to replace their existing gas using equipment to new cleaner more efficient electric systems. There will be incentives available this year through the inflation reduction act and other state incentive programs that will directly support the transition from gas to electric appliances and even provide rebates for electric panel upgrades which may be necessary to support the new systems. As a new father, Health and Safety of our children is also of paramount concern as more and more studies are coming out which show that gas appliances contribute to indoor air pollution which can cause health and respiratory problems especially in children. As an engineer in the industry I can tell you this is already a national movement we are seeing in cities throughout the country, most recently Los Angeles. Ojai made a bold statement in 2020 to adopt the reach codes and the fact that the majority of new construction ADUs and single-family residences since constructed were not required to comply due to exceptions shows that if we really want to make a difference with action behind our words we need to eliminate the exemptions and adopt a "reach code" Clean Energy Ordinance.

Thank you,

Justin Pennington, PE, Energy Engineer

# Public Comment FW: Agenda Item 7 - Reach Code

Weston Montgomery

Tue 1/10/2023 2:04 PM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

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**From:** Michelle Ellison <[REDACTED]>  
**Sent:** Tuesday, January 10, 2023 1:31 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Agenda Item 7 - Reach Code

Dear Council,

Thank you for taking up this important issue! I hope you will take this opportunity to adopt a clean reach code without exemptions, as the existing ordinance carveouts render it of very limited impact.

To summarize, key benefits of all-electric new construction are:

- Reduces GHG emissions. Gas use in buildings (for space heating, water heating, clothes drying, cooking, etc.) contributes to climate change, so replacing gas appliances with electric appliances that run on cleaner energy lowers emissions. Gas use in buildings is the largest source of emissions in Ojai, so starting with new construction is just the first step, the bigger task ahead of us is phasing out gas in existing buildings. Let's work on that next!
- Costs less to build and operate because of the avoided gas infrastructure and more efficient electric appliances.
- Healthier for occupants. Gas stoves emit a stew of toxic chemicals like methane, carbon monoxide, nitrogen oxide, particulate matter, nitrogen dioxide, and formaldehyde, and can generate unsafe levels of indoor air pollution, increasing risk for respiratory illness, cardiovascular problems, cancer, and other health conditions.
- Safer. Gas pipelines can leak and explode.

The city's former climate committee continues to work together, and we have launched an educational initiative called Electrify Ojai - [www.electrifyojai.org](http://www.electrifyojai.org) - to provide our community with information and resources about the how to's and benefits of electrification. Also worth noting, there is a lot of money becoming available this year as part of the Inflation Reduction Act to help homeowners convert from gas to electric - check out <https://www.rewiringamerica.org/app/ira-calculator>.

Regards,  
Michelle Ellison

# Public Comment FW: Written comments on Becker development.

Weston Montgomery

Tue 1/10/2023 4:04 PM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

1 attachments (19 KB)

Talking points on Becker agreement referendum decision.docx;

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**From:** Jeffrey Starkweather <[REDACTED]>

**Sent:** Tuesday, January 10, 2023 4:03 PM

**To:** [REDACTED]

**Cc:** James Vega <james.vega@ojai.ca.gov>; Weston Montgomery <Weston.Montgomery@ojai.ca.gov>; Lucas Seibert

<Lucas.seibert@ojai.ca.gov>; Matthew Summers <[REDACTED]>

**Subject:** Written comments on Becker development.

Mayor and City Council: Below and attached are my written comments on Discussion Item 3, consideration of the petition challenging the Becker development agreement. I will also be making a three minute public input summarizing key aspects off these commands. I will also have available a hard copy at the meeting.

Thank you for your consideration of my input.

Sincerely,

Jeffrey Starkweather

## **Written comments on Becker agreement referendum decision – Discussion #3**

**Jeffrey Starkweather, resident of the Ojai Valley**

I am asking you this evening to support majority rule democracy and choose option two – submit this to the voters as a referendum.

I would also strongly urge ask you to hold this referendum ASAP, for several reasons:

- 1) The development's current residents need to have some certainty regarding their rental status.
- 2) If the city council wants to implement the Mayor's oft-stated campaign promise of "collaboration" we need to move past this heated black/white dispute so all stakeholders can actually start listening and talking to each other about our critical challenges.
- 3) Any significant delay, such as holding it in a 2024 primary or general election, would certainly risk a lawsuit from the Becker group.
- 4) We need an election just on this one issue so we can have a focused public debate and voters not be distracted by other highly charged political contests.

5) The minimal cost of holding a special election, \$8,000-\$13,000 does not justify delaying a vote until the 2024 primary or municipal election.

## **Voters did not give the Mayor and new council majority a mandate to rescind the Becker agreement**

Voters did not give the Mayor a mandate. She received only 47.5% of those who voted in the Mayoral race, with a slim edge of only 42 votes. Even if she had received a majority vote, this election was not a referendum on the Becker development agreement that was approved over many public meetings, with considerable citizen input, and considerable improvement in the agreement on the basis of public negotiation between city council members and the attorney for the Becker group. And it passed, twice, with a super majority, 4-1, with only the Mayor voting no.

This was not stated in any campaign literature or public statements by any candidate during the campaign. While the Mayor specifically promised to move city operations to Net Zero by 2025 and community wide by 2030. She also promised to help implement Simply Ojai's Housing Trust Fund project. But she never promised to work with Simply Ojai to respond to a petition they might file to rescind the Becker development. In fact, I do not recall any mention of the agreement in her campaign statements. The same was true for the other newly elected city council members.

## **Rescinding the Becker agreement and not sending this to the voters to decide would be a form of minority rule, catering to the demands of one disgruntled special interest group –Simply Ojai/Mindful Citizen**

Simply Ojai submitted 607 verified signatures supporting the referendum. There were 5,375 voters, which means that if the Becker agreement were to be rescinded based on these petition signatures, the majority would be following the request of only 11% of the voters. I do not believe that is not even close to majority rule democratic decision making. Moreover, what these voters signed was a petition entitled "Referendum against an Ordinance Passed by the City Council: Ordinance No. 934." I would suggest that most people signed this in order for the city to hold a referendum on this issue, not to have the city council rescind the ordinance without a referendum. Moreover, when Simply Ojai started gathering signatures as of November 15 and for the next several weeks of signature gathering, the Mayoral and Districts One and two races were too close to call.

## **The fiscally safest approach would be to hold a referendum**

The estimated cost of a special election is between \$8,000 and \$13,000. The likely cost to the city of defending a lawsuit from the Becker group if the development agreement is rescinded would be between \$100,000 and \$1 million, depending on whether the Becker group prevailed and the city had to pay their attorney fees and expenses.

This seems to be a fiscal-risk no brainer.

## **Risk of lawsuit by the state for rescinding the development agreement**

The state of California has been aggressively going after cities who refuse to carry out the intent of their Housing Element or vote down affordable housing projects without providing solid evidence backing up their objections. Opponents have yet to present substantive evidence for their position.

For example, the city would have to defend the reasons stated in opposition at the public hearing by successful Council candidate Andrew Whitman. He said the city did not have enough water supply to support this proposed development; he was troubled that the staff report failed to address how the project would impact water supply available in Ojai. Actually, the city has no role in determining the availability of water for housing projects, affordable housing projects are exempt from local water availability limits unless a Stage Five water emergency has been declared. We have been in Stage 3 for the last five years and the city's water usage has actually declined by 30%.

## **Potential hardship to the existing tenants**

If the agreement is rescinded, none of the existing tenants will be able to use the wide and generous array of tenant protections and benefits vigorously negotiated by the prior city council. These include financial support for transition and moving expenses, one-year rental protection if no suitable new unit is available, and no rent increase for one year.

If the agreement is rescinded, the existing tenants in the Cottages could be evicted soon while their former units are converted to single-family, market-rate homes, condos or rentals. Those tenants would receive no protections since the California rent control law does not apply to single family dwellings.

Based on the previous zoning approvals, if the agreement is rescinded, the Becker group would only need to keep four affordable housing units in their two existing developments.

The bottom line is that current tenants are much better protected under the agreement. Without it, they could be forced to move with no financial support, and no other affordable housing available to them in Ojai, and probably the wider valley.

## **Tremendous loss of affordable housing and housing supply momentum.**

This development would provide the first deed-restrictive affordable-housing units, 27 compared to none if the agreement is rescinded: 20 moderate, 6 low-income and one very-low income. It is cost-prohibitive for an unsubsidized private developer, like the Becker group, to develop affordable housing, especially for low, very low and extremely low income housing clients. That has to be done by federal and state subsidized low income affordable housing non-profits such as Cabrillo and Self-Help Housing.

Also, the reason for the increased cost of housing in Ojai is a 30-year opposition to new housing, with only about one single family home approved a year during that period and no multi-family housing projects. Despite the magical thinking of some supply skeptics in Ojai, the 40 additional market-rate, small, low impact infill housing units provided by the development agreement will help moderate future housing rental rates and provide moderate and middle-class families rental housing they can afford.

## **It is time to get past the high-conflict battles that special interest groups like Simply Ojai bring into city government, and instead start developing the type of collaborative governance the Mayor promised in her campaign.**

It would be better for the common good and the potential for collaboration between the city council, staff and the community at large if Simply Ojai would honor a request by the Mayor to withdraw this petition and the other challenges to past board decisions so that this board and community could get a fresh start at working together collaboratively. But I doubt that is possible. Referendums are up or down, so there is no chance at deliberation and compromise that collaboration requires.

But it is the best option we have. Let's have this election and hopefully the voters, city council and pro and con housing advocates will accept the will of the voters and move on.

If this development agreement is rescinded based on 11% of the voter's request, the battle will not just continue, it will certainly escalate, with costly legal battles, endless petitions and referenda, and polarized arguments. This year it's Simply Ojai. Next time it could be a group with the opposing point of view.

**Delaying the referendum will also not allow us to move on from this divisive conflict.**

## **The Becker Agreement is a climate mitigation solution**

Folks who oppose the Cottages' development agreement have consistently opposed any new affordable housing in Ojai, citing the climate crisis, environmental risks and threats to our quality of life. They also claim that we cannot build a single new housing unit and somehow keep housing affordable. That is clearly magical thinking that defies the laws of housing supply and demand.

But these local anti-housing activists are completely at odds on these issues with major environmental groups such as the Sierra Club, the Greenbelt Alliance and key climate action groups such as the Cool Climate Network.

The **Cool Climate Network** found that urban infill holds the greatest opportunity to reduce greenhouses gases-- making low-impact, infill housing "the lowest hanging fruit with the highest return."

The **Sierra Club** defined infill as "the development of new homes, jobs, and services in existing urban and suburban communities and small towns. By enabling people to live closer to jobs and services, infill development reduces driving and greenhouse gas emissions while providing other quality of life and economic benefits."

The **University of California at Berkeley** found that if California is going to meet its new, steep emission standards, one of the most effective strategies will be to promote infill housing.

Despite the flawed complaints of the development agreement, the Becker project meets the definition of low-impact affordable and market rate infill housing.

## **This is a moral issue**

About 86% of Ojai's work force commutes from out of the Ojai Valley, according to the city's General Plan SWOT analysis. We cannot claim to be social-justice advocates and ignore the human health and financial hardships we impose on workers by refusing to approve low, moderate and middle income housing for them and their families. This would provide families two hours of additional time at home each work day, while eliminating their significant commuting costs. Providing housing that would allow more families who work here to also live here would be a significant benefit for our public schools, which have been dramatically losing students (and the state revenues they bring to the system) because their families can't afford to live here anymore.

Sent from [Mail](#) for Windows

## **Talking points on Becker agreement referendum decision**

I am asking you this evening to support majority rule democracy and choose option two – submit this to the voters. I would also recommend this you are considering option one, you should first hold a public hearing that is announced in advance in the local newspaper, especially since we have already has some five public input sessions that resulted in a 4-1 approval of the development agreement.

I would also request you hold this referendum ASAP, for several reasons: 1) the resident need to have some certainty regarding their rental status; 2) if the city council wants to implement the Mayor's off-stated campaign promise of "collaboration" we need to move past this heated black/white dispute so all stakeholder can actually start listening and talking to each other on our critical challenges; 3) any significant delay, such as holding in a 2014 primary or general election. Would certainly risk a lawsuit from the Becker group; 4) We need an election just on this one issue so we can have a focused public debate and vote that his not districited by other highly charged political contests. \$5) the minimal cost of holding a special election, \$8,000- \$13,000 does not justifying delaying a vote until the 2024 primary or municipal election.

### **Voters did not give the Mayor and a new council majority a mandate to rescind the Becker agreement**

Voters did not give the Mayor a mandate. She received only 47.5% of those who voted in the Mayor race. Even if she had received a majority vote, this election was not a referendum on the Becker development agreement that was approved over many public meetings, with considerable citizen input, and considerable improvement in the agreement on the basis of public negotiation between city council members and the attorney for the Becker group. And it passed with a super majority, 4-1, with only the Mayor voting no.

This was not stated in any campaign literature or public statements by any candidate during the campaign. While the Mayor specifically promised to move city operations to Net Zero by 2025 and community wide by 2030. She also promised to help implement Simply Ojai's Housing Trust Fund project. But she never promised to work with Simply Ojai to respond to a petition they might file to rescind the Becker development. In fact, I do not recall any mention of the agreement in her campaign statements. The same was true for the other newly elected city council members.

### **Rescinding the Becker agreement and not sending this to the voters to decide would be form of minority rule and catering to the demands of one disgruntled special interest group –Simply Ojai/Mindful Citizen**

Simply Ojai submitted 607 verified signatures supporting the referendum. There were 5,375 voters, which means that if the Becker agreement were to be rescinded based on these petitions, the majority would be following the request of only 11% of the voters. I do believe that is majority rule democratic decision making. Moreover, what these voters signed was a petition entitled "Referendum against an Ordinance Passed by the City Council: Ordinance No. 934." I would suggest that most people signed this in order for the city to hold a referendum on this issue, not to have the city council rescind the ordinance without a referendum. Moreover, when Simply Ojai started gathering signatures as of November 15 and for the next several weeks of signature gathering, the Mayoral and Districts One and Two races were too close to call. Obviously, if one of two races broke differently and there was a different majority, those signing the petition would certainly have been seeking a referendum.

### **The fiscally safest approach would be to hold a referendum**

The estimated cost of a special election is between \$8,000 and \$13,000. The likely cost to the city of defending a lawsuit from the Becker group if the development agreement is rescinded would be between \$100,000 and a million, depending on whether Becker group prevailed and the city had to pay their attorney fees and expenses.

This seems to be a fiscal risk no brainer

### **Risk of lawsuit by the state for rescinding the development agreement**

The state of California has been aggressively going after city's who refuse to carry out the intent of Housing Element or vote down affordable housing projects without providing solid evidence to support backing up their objections. Those have not been presented by the opponents.

For example, the city would have to defend the reasons stated in opposition at the public hearing by the council members who might vote to rescind. Councilman Whitman said the city did not have enough water supply to support this proposed development, saying that he was troubled that the staff report failed to address how the project would impact water supply available in Ojai. Not even factoring in this season's massive rainstorms, the city has not role in determining the availability of water for housing projects in the city, as well as the fact the affordable housing projects are exempt from local water availability limits unless a Stage Five water emergency has been declared. We have been in Stage 3 for the last five years and the city's water use has declined by 30%

### **Potential hardship to the existing tenants**

None of the existing tenants will be able to avail themselves to a wide and generous array of tenant protections and benefits vigorously negotiated by the prior city council. These include transition and moving financial support, one year rental protection if no suitable unit new unit is available, no rent increase for a year.

Moreover, the existing tenants in the Cottages could be evicted to rehabilitate these a single family housing, condos or rentals and those tenant would receive no protections since the California rent control law does not apply to single family dwellings.

Based on the previous zoning approvals, the Becker group would only need to keep four affordable housing units in their two existing developments.

**Tremendous loss of affordable housing and housing supply momentum.**

This development would provide the first deed restrictive affordable housing units, 27 compared to none if the agreement is rescinded. 20 moderate, 6 low income and one very low income. It is cost prohibitive for an unsubsidized private developer, like the Becker group, to develop affordable housing, especially for low, very low and extremely low income housing clients. That has to be done by federal and state subsidized low income affordable housing non-profits such as Cabrillo and Self-Help Housing.

Also, the reason for the increased cost of housing is Ojai is a thirty year opposition to new housing, with only about one single family home approved a year during that period and no multi-family housing projects. Despite the magical thinking of some supply skeptics in Ojai, the 40 additional small sized, low impact infill housing units provided by the development agreement will help moderate future housing rental increases and provide moderate and middle class families rental housing they can afford.

**It is time to get past the high conflict battles that special interests groups like Simply Ojai bring into city government and start developing the type of collaborative governance the Mayor promised in her campaign.**

It would be better for the common good and the potential for collaboration between the city council and staff and the community at large if Simply Ojai would honor a request by the Mayor to withdraw this petition and the other challenges to past board decision so that this board and community could get a fresh start at working together collaboratively. But I doubt that is possible. Referendum are up or down, so there is no chance at deliberation and compromise that collaboration requires.

But it is the best option we have. Let have this election and hopefully the voters, city council and pro and con housing advocates will accept the will of the voters and move on.

If this development agreement is rescinded based on 11% of the voter's request, the battle will not just continue, it will certainly escalate. Remember, what is good for the goose is good for the gander. What stops folks opposed to the current majority's actions from taking the exact opposition escalating steps already taken by Simply Ojai if those voters do like the current city's council actions.

 Reply all |  Delete  Junk |  ...

## FW: Applicant Presentation - Ojai Bungalows/Becker Council 1/10/2023



Weston Montgomery

Today, 4:04 PM

Brian Popovich 

 Reply all | 

1-10-23 Comments

You replied on 1/10/2023 4:10 PM.

Ojai\_Bungalows\_Refere...



3 MB

Download

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**From:** Andersen, Ginger C. <[REDACTED]>  
**Sent:** Tuesday, January 10, 2023 3:59 PM  
**To:** Matthew Summers <[REDACTED]>; Weston Montgomery <Weston.Montgomery@ojai.ca.gov>; James Hahn <james.hahn@ojai.ca.gov>  
**Cc:** Collins, Beth A. <[REDACTED]>; Carlson, Mack <[REDACTED]>  
**Subject:** Applicant Presentation - Ojai Bungalows/Becker Council 1/10/2023

Good Afternoon,

Please find the applicant's presentation for item 3 at this evening's Council meeting.

Mack Carlson and I will be attending in person on behalf of Ojai Bungalows so long as the roads remain open. Otherwise we will request to participate remotely.

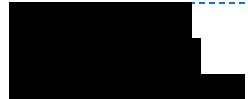
Sincerely,

**Ginger C. Andersen MCRP AICP**

Land Use Planner

**Brownstein Hyatt Farber Schreck, LLP**

[Santa Barbara, CA 93101](#)



**Brownstein - we're all in.**

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Ojai Bungalows LP & Greenhawk LLC

# *Affordable Housing Development Agreement*

Ojai City Council  
January 10, 2023

**Brownstein**



# *Updates*

## ***October 25, 2022: City Council approves the Development Agreement***

- 4-1 approval
- Added Additional Tenant Protections
  - 180-day notice to relocate
  - Rent freeze for 1 year
  - Clarification re eligibility for relocation units
- Clarified the City and/or an independent auditor enforces provisions
- “Residents only” to curtail through traffic

## ***Challenges to the City’s Approval of Development Agreement***

- *Simply Ojai v. City of Ojai* Lawsuit (Dec. 1, 2022)
- Referendum Petition Certification (Jan. 4, 2023)

## ***Ojai Bungalows – SB 330 Applications***

- Montgomery & World University Projects (December 13, 2022)

## ***City adopted revised 2021-2029 Housing Element (Dec. 13, 2022)***

- Current being reviewed by Cal. Department of Housing and Community Development

# *Ojai Has a Known Housing Crisis and Stated Goal of Formulating Partnerships*

## ***Crisis:***

- Substandard Units (Fire, Accessibility)
- Overcrowding
- Inefficient Units (Water, Energy)
- High, Non-Deed-Restricted Rents
- Insufficient New Units to Meet Demand

## ***City Goal:***

**H-5** *The City shall actively seek and formulate partnerships with for-profit and non-profit developers to produce affordable housing and provide assistance in support of project applications to achieve development objectives.*

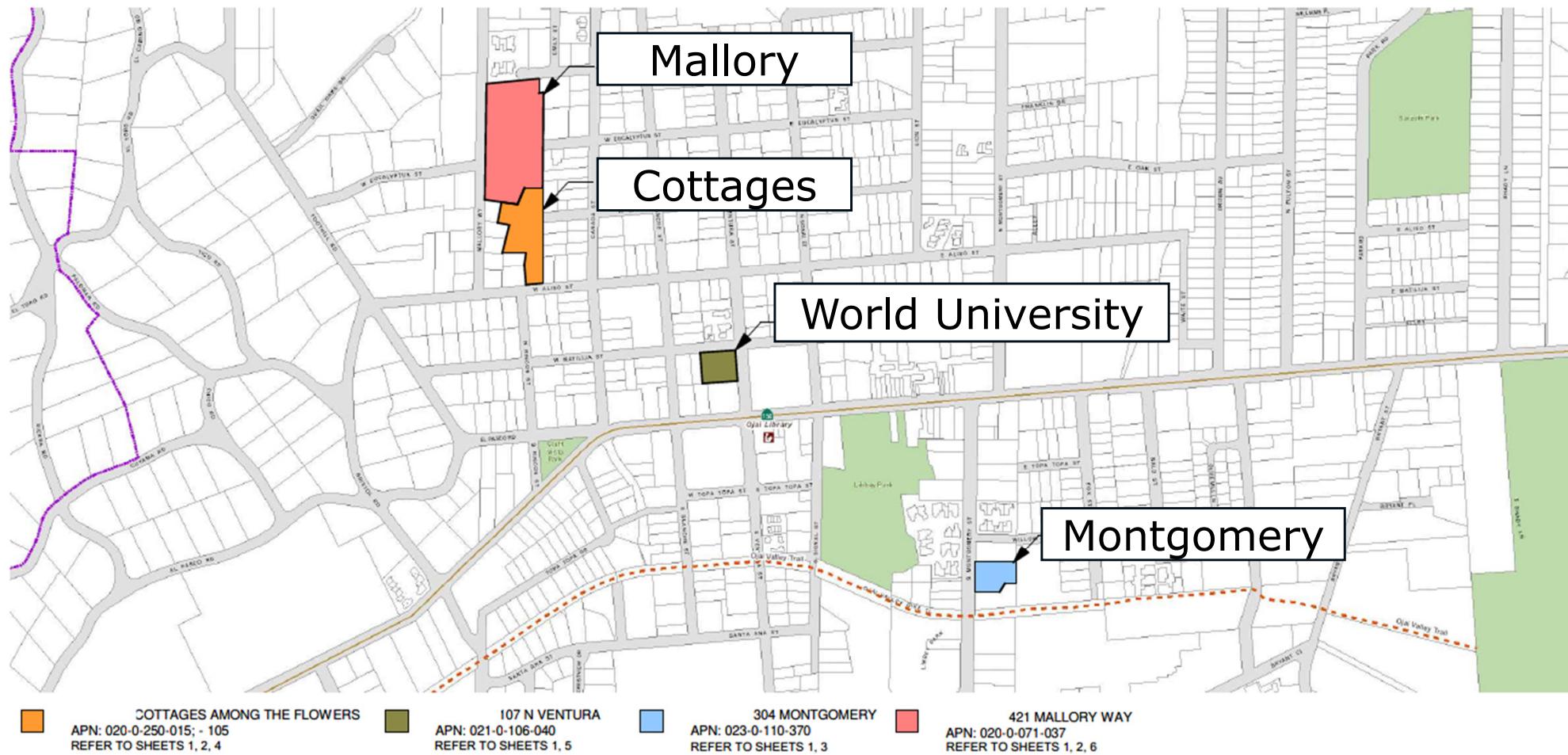
# *Development Agreement Is Good For Ojai*

## **Development Agreement:**

- (1) 27 deed-restricted affordable housing units for 55 years.
- (2) 67 efficient, updated affordable and market rate housing units.
- (3) Phasing and Tenant Relocation Plan
  - All new units constructed before updates to occupied units
  - All current tenants receive \$2,000 reimbursement
  - If income qualified:
    - First-in-line for similar deed-restricted unit at same affordability
    - Further protections if affordable units are not available
    - If not income qualified: first-in-line for market rate unit

In sum, the proposed units are 40 percent deed-restricted affordable and 60 percent market and tenant protections go far beyond existing law.

# *Development Agreement is Urban Infill*



# *Project Reduces Environmental Impacts and Improves the City of Ojai*

- Infill housing **reduces commuting** on area roadways, increasing safety and quality of life in Ojai and reducing air quality impacts from VMTs.
- Project results in a net **gain in number of trees**.
- Project results in a **net reduction in fire risk**.
- Project results in **decreased water and energy usage**, meeting sustainability goals via new construction standards and project features.
- Project **provides housing** that has been proposed since the City's 1997 Housing Element.
- Project creates critical **deed-restricted affordable units** and **significant tenant protections**.
- Project helps **preserve Ojai and improves quality of life**.

## *No Development Agreement ≠ No Development*

- Ojai Bungalows invested significant time and resources into the Development Agreement to collaborate with the City.
- However, our clients will continue to pursue these Projects through their:
  - Pending extension applications for the approved Cottages and Mallory projects, which are subject to the Housing Accountability Act
  - Vested SB 330 Preliminary Applications to preserve its rights to move forward with the Montgomery and World University projects under the “Builder’s Remedy”
- Approving the Development Agreement is right for Ojai

# *What do the Referendum and CEQA Lawsuit Do?*

- Delays Affordable Housing
- Sets Precedent for a Vocal Group to Usurp Council Decisions
- Abuses City Process
- Costs the City Time and Money
- Jeopardizes Tenant Protections

# *What Does Supporting the Development Agreement Do?*

- Alleviates the Housing Crisis
- Protects Existing Tenants at These Properties
- Provides Deed-Restricted Affordable Housing
- Provides Climate Resilient In-Fill Development
- Protects the Environment
- Reduces Water Use

*We ask you to support the  
Development Agreement  
and Let the Voters Decide  
at a Special Election.*

*Any questions?*







# Public Comment FW: Discussion Item #4

Weston Montgomery

Tue 1/10/2023 4:51 PM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

**From:** Ray Powers <[REDACTED]>

**Sent:** Tuesday, January 10, 2023 4:50 PM

**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>

**Subject:** Re: Discussion Item #4

Hello,

I'm in favor of extending the ADU compliance.

As an addendum and further discussion I would like to encourage council to consider allowing for ADU's that are actual affordable-by-design methods such as yurts, geodesic domes, cob structures and super adobe. These are structures that other cities have adopted and have found beneficial.

Ray Powers

# FW: Public Comment

Weston Montgomery

Tue 1/10/2023 5:03 PM

To:Brian Popovich <Brian.Popovich@ojai.ca.gov>;

---

**From:** Robin Godfrey <Robin.Godfrey@ojai.ca.gov>

**Sent:** Tuesday, January 10, 2023 5:03 PM

**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>

**Subject:** Public Comment

This was in Kristy's spam. I think it's legit, but do not want to forward the full email just in case:

Message

Aloha from Oahu. This six day trip with myself, my wife, daughter, son-in-law and four grandkids, all school age, 5,10,10,15, was planned by my wife and daughter last Fall to finally all get to Hawaii together. I had no conscious of it when the prior Council set the January 10 date. Balancing excursions with getting ready for this remotely, as been interesting. I sit in the hotel lobby watching the clock count down.

Thank you all for your consideration of the Historic Preservation's efforts to take on what has become a very large task what with COVID, Summer get-out-of-town visits by parcel owners, individuals and non-profit groups, and, of course, the Election, crazy as it was.

I do not plan to speak today, but hope to be able to Zoom the meeting while waiting to board planes home in the Honolulu Airport. It is anticipated that Vice-Chair Cindy Convery and recent HPC Annual Award winner Gina McHatton will be speaking with you and available to answer your questions and share the truths of our goals about the importance and benefits of a LOCAL Ojai Downtown Historic District. Giving the City the opportunity to have a Municipal Code that is streamlined and simplified and focuses on protecting our historic jewel. I have talked with so very many individuals and groups in this quest. I have found them attentive with valid and important questions. I have done my best in being listening, truthful, informative, respectful and up-to-date. My hope is the Council will consider the information presented to them and allow the HPC to continue and eventually, with parcel owner's support of being able to present to you, provide you a complete well thought out proposal for you to dissect, discuss and vote upon. Thank you so very much for your time and service. I very much enjoyed getting to know two of the new Council members. Mahalo. Brian Aikens, Chair



Robin Godfrey

Interim Assistant City Manager/PIO  
City of Ojai  
805-646-5581 ext. 103  
805-220-0480 (mobile)